

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,  
CALIFORNIA, COLORADO,  
CONNECTICUT, DELAWARE, DISTRICT  
OF COLUMBIA, FLORIDA, GEORGIA,  
HAWAII, ILLINOIS, INDIANA, IOWA,  
LOUISIANA, MARYLAND,  
MASSACHUSETTS, MICHIGAN,  
MINNESOTA, MONTANA, NEVADA, NEW  
JERSEY, NEW MEXICO, NEW YORK,  
NORTH CAROLINA, OKLAHOMA,  
RHODE ISLAND, TENNESSEE, TEXAS,  
VIRGINIA, WISCONSIN

*ex rel.* Cathleen Forney

*Plaintiffs*

v.

MEDTRONIC, INC.

*Defendant.*

**Civil Action No. 15-cv-6264**

**JURY TRIAL DEMANDED**

**EXHIBIT #1**

1           IN THE UNITED STATES DISTRICT COURT  
 2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3  
 4   UNITED STATES OF AMERICA, CALIFORNIA,           )  
 5   COLORADO, CONNECTICUT, DELAWARE, DISTRICT   )  
 6   OF COLUMBIA, FLORIDA, GEORGIA, HAWAII,        )  
 7   ILLINOIS, INDIANA, IOWA, LOUISIANA,           )  
 8   MARYLAND, MASSACHUSETTS, MICHIGAN,           )  
 9   MINNESOTA, MONTANA, NEVADA, NEW JERSEY,       )  
 10   NEW MEXICO, NEW YORK, NORTH CAROLINA,        )  
 11   OKLAHOMA, RHODE ISLAND, TENNESSEE, TEXAS,     )  
 12   VIRGINIA, WISCONSIN,                            )  
 13   Ex Rel.   CATHLEEN FORNEY                        )  
 14           Plaintiffs,                                ) Civil Action No.  
 15                   -v-                                 ) 5:15-cv-6264-EGS  
 16   MEDTRONIC INC.,                                 )  
 17           Defendant.                                )

18   -----  
 19           VIDEOTAPED DEPOSITION OF CATHLEEN FORNEY

20                   Lancaster, Pennsylvania

21                   Tuesday, November 14, 2017

22  
 23   Reported by:

          Gail L. Inghram Verbano,

24   BA, CRR, CLR, RDR, CSR-CA (No. 8635)

          Job No. 133496

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1 November 14, 2017  
2 9:08 a.m.

3  
4  
5  
6  
7 Videotaped deposition of CATHLEEN  
8 FORNEY, held at the offices of BARLEY SNYDER,  
9 LLC, 126 East King Street, Lancaster,  
10 Pennsylvania, before GAIL INGRAM VERBANO,  
11 Registered Diplomat Reporter, Certified  
12 Realtime Reporter, Certified Shorthand  
13 Reporter-CA (No. 8635) and Notary Public in and  
14 for the Commonwealth of Pennsylvania.  
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1  
2  
3 APPEARANCES:

4  
5 Attorneys for Plaintiffs:  
6 LAW OFFICES OF SUSAN L. BURKE  
7 1611 Park Avenue  
8 Baltimore, Maryland 21217  
9 BY: SUSAN BURKE, ESQ.  
10  
11  
12  
13

14 Attorneys for Defendants:  
15 ROPES & GRAY  
16 Prudential Tower  
17 800 Boylston Street  
18 Boston, Massachusetts, 02199  
19 BY: KIRSTEN MAYER, ESQ.  
20 MITCHELL STROMBERG, ESQ.  
21  
22

23 ALSO PRESENT:

24 KATHRYN WOZNY, In-House Counsel, Medtronic  
25 ADOLPH GREEN, Legal Videographer

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1 CATHLEEN FORNEY  
2 THE VIDEOGRAPHER: This is the start  
3 of tape labeled No. 1 of the videotaped  
4 deposition of Cathleen Forney, in the  
5 matter of Cathleen Forney V. Medtronic,  
6 Inc. in the United States District Court  
7 for the Eastern District of Pennsylvania,  
8 Case No. 5:15-CV-6264-EGS.  
9

10 This deposition is being held at 126  
11 East King Street, Lancaster, Pennsylvania,  
12 on November 14th, 2017, at approximately  
13 9:08.

14 My name is Adolph Green from TSG  
15 Reporting, Inc. and I am the legal video  
16 specialist. The court reporter is Gail  
17 Verbano, in association with TSG  
18 Reporting.

19 Will counsel please introduce  
20 yourselves.

21 MS. MAYER: Kirsten Mayer for  
22 Medtronic.

23 MR. STROMBERG: Mitchell Stromberg  
24 for Medtronic.

25 MS. WOZNY: Kathryn Wozny on behalf  
of Medtronic.

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1 CATHLEEN FORNEY

2 MS. BURKE: Susan Burke for relator.

3 THE VIDEOGRAPHER: Will the reporter  
4 please swear in the witness.

5 CATHLEEN FORNEY  
6 called as a witness, having been duly sworn by  
7 a Notary Public, was examined and testified as  
8 follows:

9 EXAMINATION

10 BY MS. MAYER:

11 Q. Good morning, Ms. Forney. Could you  
12 please tell us your full name for the record.

13 A. Cathleen Forney.

14 Q. Where do you live?

15 A. I live at 353 College Avenue,  
16 Lancaster, Pennsylvania.

17 Q. Have you ever been deposed before?

18 A. I have not been deposed before.

19 Q. A deposition is -- what we're going  
20 to do today in the deposition is I'm going to  
21 ask you questions, and you're going to give me  
22 answers to the questions. To make it easy for  
23 the court reporter and the videographer, it's  
24 going to be important for you to let me finish  
25 my question before you answer the question.

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CATHLEEN FORNEY

Can you do that?

A. Yes.

Q. Occasionally, I'll ask a question -- hopefully occasionally -- that doesn't make sense to you. If I ask you a question and there's something in it that you don't understand, will you tell me that?

A. Yes.

Q. If you need to take a break at any time during the day, as long as a question isn't pending, you can have a break. Would you just please let us know if you need to take a break?

A. Yes.

Q. If a question is pending, we'll need you to answer the question first, but then we can take a break.

A. Okay.

Q. Where do you currently work?

A. I currently work at Lancaster General Hospital in Lancaster, Pennsylvania.

Q. How long have you worked there?

A. I have worked there since February of 2012.

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CATHLEEN FORNEY

Q. What is your title?

A. I am the director of research operations.

Q. What are your responsibilities as director of research operations?

A. I manage the execution of the research clinical trials that are run at Lancaster General Hospital, so the staff that runs them.

Q. What's your salary?

A. My salary is -- it's probably between 115- and 120,000.

Q. Is there any commission or bonus or incentive opportunity?

A. No.

Q. Have you held the position of director of research operations the entire time you've been with Lancaster General Hospital?

A. Yes.

Q. Was that the first position you took after you were terminated from Medtronic?

A. Yes.

Q. In your position as director of research operations, do you have occasion to

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CATHLEEN FORNEY

interact with representatives from medical device companies?

A. Yes.

Q. From Medtronic?

A. Yes.

Q. What's the nature of your interactions with representatives from Medtronic?

A. Medtronic supports some of the research clinical trials we run. So the relationship would be around executing the trial.

Q. Is there one person at Medtronic that you coordinate with, or is it different people depending on the circumstances?

MS. BURKE: Object to form.

THE WITNESS: Joann Tuzi is our field representative from Medtronic.

BY MS. MAYER:

Q. Do you coordinate or interact with anyone from Medtronic other than Joann Tuzi?

A. Yes.

Q. Who?

A. Members of study teams inside.

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CATHLEEN FORNEY

Q. Inside what?

A. Inside Medtronic.

Q. Other than members of study teams inside Medtronic and Joann Tuzi, is there anyone else from Medtronic that you interact with?

A. Occasional field personnel that support the trial.

Q. Anyone else from Medtronic?

A. Occasional scientists whose study it is.

Q. Anyone else from Medtronic?

A. Monitors that monitor our work.

Q. Anyone else from Medtronic?

A. No.

Q. What's Joann Tuzi's role in terms of her interactions with you?

A. Field clinical engineer.

Q. What does that mean?

A. She supports sites in the field that conduct Medtronic research.

Q. Are there particular -- does she do that for all Medtronic products or just a particular type of Medtronic product?

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CATHLEEN FORNEY

A. She does that for all Medtronic research studies.

Q. Have -- since you've been in your role as director of research ops, how many Medtronic research studies have been conducted at Lancaster General?

MS. BURKE: Objection; foundation.

THE WITNESS: I'm making a guess, in five years, maybe five to seven.

BY MS. MAYER:

Q. Are there research studies that Medtronic conducts at Lancaster General that you would not be aware of?

MS. BURKE: Object.

THE WITNESS: No.

BY MS. MAYER:

Q. So if Medtronic is conducting a research study at Lancaster General, while you've been in the role of director of research ops, you know about it; right?

A. Yes.

Q. And you estimate five to seven --

A. Yes.

Q. -- since 2012?

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CATHLEEN FORNEY

Have any of those research trials involved cardiac rhythm devices?

A. Yes.

Q. How many of the trials involve cardiac rhythm devices?

A. All.

Q. What were the trials studying? We can start with the first trial that you remember back in 2012 -- since 2012.

A. Heart failure in an implantable reveal device, pilot. And then that rolled into a study. A pilot rolled into a study.

Q. What was the study looking at?

A. Medtronic device diagnostics in the management of heart failure patients.

Q. What about the next study?

MS. BURKE: Object to form.

THE WITNESS: AF ablation.

BY MS. MAYER:

Q. Was that a pilot or a regular study?

A. Regular study.

Q. What was it looking at with respect to AF ablation?

A. Medtronic's long-term post-approval

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CATHLEEN FORNEY

study for AF ablation tools.

Q. What was the third Medtronic study that you recall at Lancaster General between 2012 and now?

A. REVAMP is looking at diastolic heart failure patients with Medtronic devices.

Q. What is REVAMP?

A. It's the name of the clinical trial. It's a scientist study.

Q. What is the study examining?

A. Diastolic heart failure and patients with Medtronic device and a therapy intervention.

Q. What about the fourth study that you recall involving Medtronic devices between 2012 and -- and the present at Lancaster General?

A. That would be the fourth that I just stated.

Q. Okay.

A. Respond.

Q. So Respond is the fifth?

A. Uh-huh.

Q. Okay. And what does Respond involve?

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CATHLEEN FORNEY

A. Diastolic heart failure patients and patients with Medtronic pacemakers.

Q. And is it also looking at a therapeutic intervention involving the pacemakers and heart failure patients?

A. Yes.

Q. And just to clarify, you, I think, started by talking about the pilot that rolled into a study.

A. Uh-huh.

Q. Were you thinking of those as two separate studies of the five to seven?

A. Yes.

Q. Okay. So after Respond, do you recall an additional Medtronic study at Lancaster General Hospital?

A. There were studies ongoing with Medtronic when I arrived.

Q. Involving cardiac rhythm devices?

A. Yes.

Q. And did you take over coordinating with Medtronic on those studies when you became director of research ops?

A. Yes.

4 (Pages 10 to 13)

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CATHLEEN FORNEY

Q. And were those part of the five to seven studies that you recalled?

A. Yes.

Q. So there's about two of those?

A. Block HF.

Q. What's that?

A. A research study.

Q. Involving -- looking at what question?

A. CRT implant in patients with heart block.

Q. And is that the only study that was ongoing when you arrived involving Medtronic cardiac rhythm devices, or was there another one?

A. I can't recall in the moment.

Q. Other than the studies that we've just gone through -- I think there's six -- do you recall any other Medtronic studies that you have been involved in coordinating as director of research ops at Lancaster General?

A. No.

Q. Are any of those studies still ongoing?

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CATHLEEN FORNEY

A. Yes.

Q. Which ones?

A. REVAMP, Respond and Reveal HF.

Q. Have you spoken or otherwise communicated with Joann Tuzi about this case or the issues involved in this case?

A. No.

Q. Have you spoken or otherwise communicated with any of the other Medtronic personnel that you described about this case or the issues in this case?

A. No.

Q. I want to just turn to your background before Medtronic a little bit. Where did you attend college, Ms. Forney?

A. I attended at Geneva College and University of Pittsburgh.

Q. And did you graduate with a degree?

A. I have a degree in biology.

Q. Bachelor's, master's?

A. Bachelor's.

Q. So you started at Geneva, finished at Pittsburgh?

A. Ask that again, please.

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CATHLEEN FORNEY

Q. Sorry. You said you attended college at Geneva and at the University of Pittsburgh.

A. Correct.

Q. Which college did you graduate from?

A. Geneva.

Q. Did you start college at Pittsburgh?

A. At Geneva.

Q. What was the college -- did you -- what schooling did you do at the University of Pittsburgh?

A. An independent major.

Q. And what was the major?

A. Child development.

Q. Did you get a degree from the University of Pittsburgh?

A. No.

Q. What year did you get your bachelor's in biology?

A. 1980.

Q. What did you do after graduating from college, for work?

A. I worked at the Medical Center of Beaver County.

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CATHLEEN FORNEY

Q. And what did you do for the Medical Center of Beaver County?

A. I ran their child life department.

Q. How long did you work for the Medical Center of Beaver County?

A. Two years.

Q. What did you do for work after that?

A. In 1991 I worked for St. Joe's Hospital in Tampa, Florida.

Q. So you graduated from Geneva in 1980, and you worked at the Medical Center of Beaver County for about two years. Was that immediately after college?

A. Yes.

Q. So you were at the Medical Center of Beaver County until about 1982?

A. Yes.

Q. Was the next job that you held working at St. Joe's Hospital in Tampa, Florida?

A. Yes.

Q. What did you do in between 1982 and 1991?

A. I had a family.

5 (Pages 14 to 17)

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CATHLEEN FORNEY

Q. What was your position at St. Joe's Hospital in Florida?

A. Research coordinator.

Q. And what, in a general matter, general sense, were your duties as a research coordinator there?

A. I ran clinical trials for the hospital.

Q. How long did you work at St. Joe's Hospital in Tampa as a research coordinator?

A. Until 1996.

Q. Where did you go for work at that time?

A. Medtronic.

Q. Why did you leave St. Joe's for Medtronic?

A. Growth opportunity.

Q. What do you mean by that?

A. An opportunity to take my skills in electrophysiology and partner with a company that ran research EP studies and the technology behind those studies, the technology involved in those studies, the product technology.

Q. Where -- when you say that it was an

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CATHLEEN FORNEY

opportunity to take your skills in electrophysiology and partner with a company, what skills in electrophysiology had you developed by 1996?

A. I attended the Pacer School of Technology, 1990 to 1991, and five years working clinically in a hospital with medical devices.

Q. So what was the education you did at the Pacer School of Technology between 1990 and 1991?

A. It was learning about medical devices and the electric components of a heart.

Q. Why did you pursue that?

A. Interest.

Q. Did you get a degree from Pacer?

A. Certificate.

Q. What's the certificate?

A. In -- I don't know the exact verbiage, a certificate from the school.

Q. Do you remember what the course was called?

A. No.

Q. And you said that you had five years

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CATHLEEN FORNEY

working clinically with devices in the hospital. Was that your work at St. Joe's?

A. Yes.

Q. What clinical work did you do at St. Joe's in that five years?

A. Research studies for multiple manufacturers.

Q. Were you conducting the research, or did you play a different role?

A. Executed the protocols.

Q. What did that mean?

A. A sponsor, a company, brings a protocol to a site, and we execute it accurately, according to how it's written and conducted.

Q. Were you providing clinical care?

A. Yes.

Q. What clinical care were you providing?

A. Device programming.

Q. Anything else?

A. A conduit for research subjects' concerns to providers.

Q. What do you mean by "a conduit for

Page 21

CATHLEEN FORNEY

research subject concerns to providers"?

A. Communicate patient concerns to a physician.

Q. And what do you mean by "device programming"?

A. A device has programming options, which are therapy, and the protocol would state how a device should be programmed in that patient in the clinical trial.

Q. Was it always the same kind of device that you were programming in the work you did in the five years at St. Joe's?

A. No.

Q. So when you say you were programming devices, was that different devices or always the same device?

A. Different devices.

Q. Did the studies that you coordinated for St. Joe's include Medtronic studies?

A. Yes.

Q. And so were you programming Medtronic devices in connection with your work at St. Joe's Hospital as a research coordinator?



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CATHLEEN FORNEY

A. Yes.

Q. For the clinical trials?

A. Yes.

Q. Aside from device programming for the clinical trials being run at St. Joe's Hospital, did you provide any other clinical care?

A. No.

Q. Did you do any work at St. Joe's that was not on the research studies?

A. No.

Q. Aside from your undergraduate degree from Geneva and your certificate from the Pacer School of Technology, have you had any other post-high school education?

A. Yes.

Q. What additional post-high school education?

A. A master's in business administration.

Q. Where did you get your master's in business administration?

A. Penn State.

Q. When did you -- get that degree?

Page 23

CATHLEEN FORNEY

A. 2005.

Q. Was that a full-time program?

A. No.

Q. Why did you get a master's in business administration?

A. To increase my skill sets.

Q. What skill set in particular were you trying to increase?

A. Business.

Q. Any particular type of business?

A. General business.

Q. Did you pay for the MBA program or did you receive assistance?

A. I received assistance.

Q. From whom or what?

A. Medtronic.

Q. So Medtronic paid for the cost of the MBA?

A. Partial.

Q. How much? What part?

A. Medtronic stipend per year.

Q. How much of the tuition and fees of the MBA did that stipend cover?

A. I don't recall.

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CATHLEEN FORNEY

Q. Was it half?

MS. BURKE: Object to foundation.

THE WITNESS: I don't recall.

BY MS. MAYER:

Q. Do you recall that it was most?

MS. BURKE: Object to foundation.

THE WITNESS: No.

BY MS. MAYER:

Q. Did you continue to work at Medtronic while you were pursuing the MBA?

A. Yes.

Q. Part-time or full-time at Medtronic while you were pursuing the MBA?

A. Full-time.

Q. How many years did it take to complete your MBA at Penn State?

A. Four years.

Q. So from about 2001 to 2005 you were pursuing the MBA at Penn State?

A. Yes.

Q. You said you started at Medtronic in 1996. What was your position at Medtronic when you began?

A. Technical field engineer.

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CATHLEEN FORNEY

Q. And how long did you hold that position at Medtronic?

A. Eleven, 12 years.

Q. So until about 2007 or 2008?

A. Until January of 2007.

Q. During the time that you were technical field engineer, did you work in one geography, or did you move around?

A. One geography.

Q. Which geography?

A. Central Pennsylvania district.

Q. And what division or part of Medtronic did you work for during that period? 1996 to January 2007?

A. Cardiac rhythm management.

Q. What were your responsibilities as a technical field engineer?

A. Support research.

Q. Is that the same role that Joann Tuzi plays for Medtronic with you at Lancaster?

A. No.

Q. What did you do in support of research as a technical field engineer?

A. Supported Medtronic studies

7 (Pages 22 to 25)



1 CATHLEEN FORNEY  
 2 conducted within the Central Pennsylvania  
 3 district.  
 4 Q. When you say you "supported  
 5 Medtronic studies," what do you mean by  
 6 "supported"?  
 7 A. Supported research coordinators at  
 8 centers that held the studies.  
 9 Q. And when you say you "supported,"  
 10 what do you mean the word "supported"?  
 11 A. Answered questions, supported  
 12 implants, supported device follow-up in  
 13 research subjects.  
 14 Q. So by "answered questions," you mean  
 15 answered questions of research coordinators at  
 16 the centers that held the studies?  
 17 A. Answered protocol questions.  
 18 Q. Can you give me an example of what  
 19 that would be and was in practice during that  
 20 12 years?  
 21 MS. BURKE: Object to form.  
 22 THE WITNESS: Importance of  
 23 follow-up within study-specified windows,  
 24 as an example.  
 25 BY MS. MAYER:

1 CATHLEEN FORNEY  
 2 for research coordinators during this time that  
 3 you were a technical field engineer?  
 4 A. Yes.  
 5 Q. Would it be fair to say that you  
 6 answered any questions that the research  
 7 coordinator at the center would have about the  
 8 study?  
 9 A. If I knew the answer.  
 10 Q. If you didn't know the answer, what  
 11 did you do?  
 12 A. Contact a study team member inside  
 13 Medtronic.  
 14 Q. And what would happen -- what would  
 15 you do after contacting the study team member  
 16 inside Medtronic?  
 17 MS. BURKE: Object to form.  
 18 THE WITNESS: Convey the information  
 19 to the site.  
 20 BY MS. MAYER:  
 21 Q. You said that, in your role for 11  
 22 to 12 years as a technical field engineer, you  
 23 also supported implants; is that correct?  
 24 A. Yes.  
 25 Q. What do you mean down by saying you

1 CATHLEEN FORNEY  
 2 Q. How is that an example of answering  
 3 a protocol question but from a research  
 4 coordinator?  
 5 MS. BURKE: Object to form.  
 6 THE WITNESS: A protocol dictates  
 7 windows in which a research subject must  
 8 be seen. If not seen in the windows, it's  
 9 a protocol deviation.  
 10 BY MS. MAYER:  
 11 Q. And so a research coordinator might  
 12 reach out to you to ask questions about those  
 13 windows?  
 14 A. Correct.  
 15 Q. Did you answer questions about  
 16 anything other than the protocols for research  
 17 coordinators at centers that held the studies?  
 18 A. Yes.  
 19 Q. What else?  
 20 MS. BURKE: Object to form.  
 21 THE WITNESS: An example might be a  
 22 new device algorithm and how that worked.  
 23 BY MS. MAYER:  
 24 Q. Were there other types of questions  
 25 that you would answer -- get asked and answer

1 CATHLEEN FORNEY  
 2 "supported implants" during this time?  
 3 A. I supported Medtronic's new ICD  
 4 technology implants.  
 5 Q. What do you mean by "supported"?  
 6 A. I attended the implant.  
 7 Q. Other than attending the implant,  
 8 did your support include anything else?  
 9 A. Ran Medtronic programmer during  
 10 implant.  
 11 Q. And what's the Medtronic programmer  
 12 that you ran during the implant?  
 13 A. A programmer is a computer that  
 14 communicates with the implantable devices that  
 15 a manufacturer makes.  
 16 Q. Other than attending the implant and  
 17 running the Medtronic programmer during the  
 18 implant, did you do anything else in support of  
 19 implants while you were a technical field  
 20 engineer?  
 21 A. Coached physicians.  
 22 Q. What do you mean by "coached  
 23 physicians" in this context?  
 24 A. Coach questions they have during the  
 25 implant procedure.

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CATHLEEN FORNEY

Q. What do you mean by saying "coached questions during the implant procedure"?

A. An example might be if they had a lead-handling question, I would answer the question.

Q. So other than attending the implant, running the Medtronic programming during the implant and answering physicians' questions about the device, was there anything else you did in support of the implant?

A. Reported the implant to Medtronic.

Q. Was there anything else?

MS. BURKE: Object to form.

THE WITNESS: Completed device registration paperwork.

BY MS. MAYER:

Q. Anything else?

MS. BURKE: Object to form.

THE WITNESS: Printed a report for the physicians' implant dictation.

BY MS. MAYER:

Q. Anything else?

MS. BURKE: Object to form.

THE WITNESS: Printed device

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CATHLEEN FORNEY

settings for clinic.

BY MS. MAYER:

Q. Anything else in support of implants during this time as a tech field engineer?

A. Not that I recall. Provide implant paperwork to the research coordinator.

Q. So during this 11 to 12 years that you were a tech field engineer for Medtronic in the cardiac rhythm management group, you supported Medtronic implants in research studies by attending the implant, running Medtronic programming during the implant, answering physician questions about the device that was being implanted, reporting the implant to Medtronic, completing device registration paperwork, printing a report for the physician's implant dictation, printing the device settings for the clinic and providing implant paperwork to the research coordinator. Is that correct?

A. Yes.

Q. Anything else?

MS. BURKE: Object to form.

THE WITNESS: I supported

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nonresearch study implants.

BY MS. MAYER:

Q. So I think we said earlier that as a tech field engineer, 1996 to 2007, January 2007, your responsibility was to support research. Is that correct?

A. Correct.

Q. Did you have other responsibilities in addition to supporting research?

A. Yes.

Q. What other responsibilities?

A. Supporting nonresearch ICD implants.

Q. Any other responsibilities?

A. Supporting Medtronic's new product launches.

Q. Any other responsibilities?

A. Educating customers to new products.

Q. Any other responsibilities?

A. Educating Medtronic Central PA district, staff, education to new products.

Q. Any other responsibilities?

A. Support their learning.

Q. Is that different from educating Medtronic Central PA district staff?

Page 33

CATHLEEN FORNEY

A. Yes.

Q. What do you mean by "support their learning"?

A. Attend an implant with them.

Q. And by "them," who do you mean?

A. Medtronic staff.

Q. And who is -- who are you referring to when you say "Medtronic staff"?

A. Sales reps and clinical specialists.

Q. In addition to supporting or nonresearch ICD implants, supporting Medtronic new product launches, educating customers to new products, educating Medtronic Central Pennsylvania district staff about new products and supporting their learning by attending implants with the sales reps and clinical specialists and supporting research, did you have any other responsibilities as a technical field engineer?

A. Troubleshoot difficult cases.

Q. Anything else?

MS. BURKE: Object to form.

THE WITNESS: Support customer clinics.

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1 CATHLEEN FORNEY  
 2 BY MS. MAYER:  
 3 Q. Anything else?  
 4 MS. BURKE: Object to form.  
 5 THE WITNESS: Not that I recall.  
 6 BY MS. MAYER:  
 7 Q. You said you supported nonresearch  
 8 ICD implants as one of your responsibilities as  
 9 a tech field engineer.  
 10 A. Yes.  
 11 Q. When you say you supported these  
 12 implants, those nonresearch implants, did you  
 13 do anything different than what you did when  
 14 you supported Medtronic's new ICD tech implants  
 15 in research studies? Or was it essentially the  
 16 same?  
 17 A. The difference is, in research, the  
 18 product is not commercially available; versus a  
 19 product being commercially available.  
 20 Q. Other than that difference, was the  
 21 work that you were doing essentially the same?  
 22 A. Correct.  
 23 Q. I think you said that one of your  
 24 responsibilities as a tech field engineer was  
 25 to support customer clinics. What do you mean

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1 CATHLEEN FORNEY  
 2 by "support customer clinics"?  
 3 A. Attend a clinic, perform device  
 4 follow-up.  
 5 Q. When you say "attend a clinic," what  
 6 do you mean by "a clinic?"  
 7 A. Every implanting center has a clinic  
 8 in which they follow the patients with  
 9 implantable devices.  
 10 Q. Is a clinic, in the way in which  
 11 you're using the word, a place or an event?  
 12 A. It's a place where device follow-up  
 13 patients -- a place where patients with devices  
 14 are followed.  
 15 Q. You said you performed device  
 16 follow-up. What do you mean by "perform device  
 17 follow-up"?  
 18 A. Perform device interrogation.  
 19 Q. Anything else?  
 20 A. Review data.  
 21 Q. Anything else?  
 22 A. Make recommendations.  
 23 Q. Anything else?  
 24 A. Document findings.  
 25 Q. Anything else?

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1 CATHLEEN FORNEY  
 2 A. Complete clinics' worksheets.  
 3 Q. Anything else?  
 4 A. Greet the patient.  
 5 Q. Anything else?  
 6 A. Say good-bye to the patient. Maybe  
 7 answer clinic staff questions with unique  
 8 findings.  
 9 Q. So what you mean by performing  
 10 device follow-up is interrogation of the  
 11 device, reviewing data, making recommendations.  
 12 What do you mean by "making recommendations"?  
 13 MS. BURKE: Object to form.  
 14 BY MS. MAYER:  
 15 Q. When you said you made  
 16 recommendations when you performed device  
 17 follow-up, what did mean by "making  
 18 recommendations"?  
 19 A. When asked, as the sponsor expert in  
 20 the room, how might best to program the device  
 21 to the patient, we would make recommendations  
 22 based upon our knowledge of an algorithm.  
 23 Q. And the algorithm that you just  
 24 referred to, was that a Medtronic algorithm?  
 25 A. Correct.

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1 CATHLEEN FORNEY  
 2 Q. And was there more than one  
 3 algorithm for a device?  
 4 A. Yes.  
 5 Q. And did different Medtronic devices  
 6 have different algorithms?  
 7 A. Yes.  
 8 Q. Were there more than five algorithms  
 9 that could be used for a device?  
 10 MS. BURKE: Object to form.  
 11 THE WITNESS: Yeah.  
 12 BY MS. MAYER:  
 13 Q. How many algorithms would typically  
 14 be available for use with a Medtronic device  
 15 during this time frame?  
 16 A. I don't know.  
 17 Q. More than ten?  
 18 MS. BURKE: Object to foundation.  
 19 THE WITNESS: Probably not.  
 20 BY MS. MAYER:  
 21 Q. So somewhere between five and ten  
 22 would be a reasonable estimate?  
 23 A. Yes.  
 24 Q. And why was it important to have  
 25 knowledge of these five or ten algorithms when

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1 CATHLEEN FORNEY  
2 programming a device to the patient?  
3 MS. BURKE: Object to foundation.  
4 THE WITNESS: To understand  
5 device/patient interaction.  
6 BY MS. MAYER:  
7 Q. What do you mean by "to understand  
8 device/patient interaction"?  
9 A. A device is implanted to conduct  
10 therapy in a patient; and interpreting device  
11 reports to therapy delivery.  
12 Q. So is it fair to say it was  
13 important to have knowledge of these five or  
14 ten algorithms when programming a device  
15 because that information was important into  
16 ensuring that the device could provide therapy  
17 to the patient?  
18 MS. BURKE: Object to form.  
19 THE WITNESS: To ensure normal  
20 device function in a patient.  
21 BY MS. MAYER:  
22 Q. So when figuring out how to best  
23 program a Medtronic device to the patient at  
24 this time, it was important to understand the  
25 five to ten different algorithms for that

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1 CATHLEEN FORNEY  
2 device to ensure -- so that the device could be  
3 programmed to ensure normal device function in  
4 the patient?  
5 MS. BURKE: Object to form.  
6 THE WITNESS: Yes.  
7 BY MS. MAYER:  
8 Q. And that was information that you  
9 had as a technical field expert; correct?  
10 A. Yes.  
11 Q. So I think we were talking about  
12 what you meant by "performing device  
13 follow-up"; and we talked about interrogating  
14 the device, reviewing data, making  
15 recommendations, documenting findings,  
16 completing clinic worksheets, saying hello and  
17 saying good-bye to a patient and answering  
18 clinic or staff questions if unique findings.  
19 Was there anything else that you did  
20 as performing device follow-up?  
21 A. Not that I recall.  
22 Q. When you said that you "reviewed  
23 data," what did you mean by that?  
24 A. Device data.  
25 Q. What was the source of the device

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1 CATHLEEN FORNEY  
2 data?  
3 A. The implantable device.  
4 Q. And how did you get the data from  
5 the implantable device?  
6 A. Programmer.  
7 Q. Can you explain what you mean by  
8 that, please.  
9 A. So the programmer interrogates the  
10 patient's device and prints out a report.  
11 MS. BURKE: Can we take a break when  
12 you get to a good time, Kirsten?  
13 MS. MAYER: Sure. Let me just see  
14 if I can close out a few questions on  
15 this.  
16 BY MS. MAYER:  
17 Q. So when you said that you  
18 interrogated the device, you meant you used the  
19 programmer to interrogate the device and  
20 produce the report?  
21 A. I ran the programmer.  
22 Q. So what you mean by "interrogating a  
23 device" is that you run the programmer?  
24 A. If I'm interrogating the device, I'm  
25 running a programmer that's interrogating the

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1 CATHLEEN FORNEY  
2 device.  
3 Q. And the programmer produces a  
4 report, which is data that you reviewed; is  
5 that correct?  
6 A. Correct.  
7 Q. What did your review of the data  
8 consist of?  
9 A. Looking for normal device function.  
10 Q. Did it include anything else?  
11 A. Looking for episode information.  
12 Q. Anything else?  
13 A. Conversing with patient.  
14 Q. What do you mean by "conversing with  
15 patient" as a part of the review of data?  
16 A. Asking if they were aware of an  
17 episode the device recorded.  
18 Q. Anything else?  
19 A. Not that I recall.  
20 Q. So when you reviewed the data that  
21 was printed out by the programmer, you looked  
22 for normal device function, you looked for  
23 episode information, and you would sometimes  
24 converse with a patient if you saw an episode?  
25 MS. BURKE: Objection to form.

1 CATHLEEN FORNEY  
 2 THE WITNESS: Yes.  
 3 BY MS. MAYER:  
 4 Q. Is there anything that you did as a  
 5 field engineer, a tech field engineer, that we  
 6 haven't already discussed today?  
 7 A. Another detail to follow-up is  
 8 perform testing manually when device not  
 9 automated.  
 10 Q. What do you mean by "perform testing  
 11 manually when device not automated"?  
 12 A. An example is test a lead threshold.  
 13 Q. So -- but could you -- instead of  
 14 just giving me an example, could you explain,  
 15 please, what you mean by "perform testing  
 16 manually when a device is not automated."  
 17 A. So conduct a threshold test altering  
 18 voltage or milliseconds to determine loss of  
 19 capture or sensing on a lead.  
 20 Q. Let me try coming at this a  
 21 different way.  
 22 What do you mean by saying that a  
 23 device is not -- might not be automated? I  
 24 think you spoke earlier that you would  
 25 interrogate a device using a programmer.

1 CATHLEEN FORNEY  
 2 device isn't automated, you might perform  
 3 testing manually.  
 4 And so I think you've given me an  
 5 example of a device algorithm that might be  
 6 conducted automatically but that older devices  
 7 maybe didn't have the algorithm.  
 8 And so I don't think -- I don't  
 9 understand how your answer connects to my  
 10 question, and so I'm trying to see if I can  
 11 help make that connection, because I've asked  
 12 you to explain it and you're not explaining it.  
 13 So can you explain --  
 14 MS. BURKE: What's the question?  
 15 BY MS. MAYER:  
 16 Q. So my question is, when you say that  
 17 "when a device is not automated," what do you  
 18 mean by that statement?  
 19 A. An older device may not have an auto  
 20 feature where it conducts the test on its own  
 21 without a human conducting it.  
 22 Q. When did devices stop -- you  
 23 mentioned these were older devices. During the  
 24 time period relevant to this case, which is  
 25 November 2009 forward, were there devices being

1 CATHLEEN FORNEY  
 2 MS. BURKE: Object.  
 3 BY MS. MAYER:  
 4 Q. What are you talking about here when  
 5 you say when a device is not automated, you  
 6 needed to perform testing manually?  
 7 MS. BURKE: Object to form. Could  
 8 you read that question back for me,  
 9 please.  
 10 (Record read.)  
 11 MS. BURKE: Okay. Object to form.  
 12 THE WITNESS: An example of a device  
 13 algorithm might be to conduct that  
 14 automatically. Older devices didn't have  
 15 that algorithm.  
 16 BY MS. MAYER:  
 17 Q. So when you say "when a device is  
 18 not automated," what you mean is that there may  
 19 be newer algorithms that are not programmed  
 20 into the device that you have to run manually;  
 21 is that correct?  
 22 A. State that again, please.  
 23 Q. So I don't want to be trying to be  
 24 tricky here. I'm really just trying to  
 25 understand what you mean by saying that when a

1 CATHLEEN FORNEY  
 2 used that were not automated for which manual  
 3 testing might need to be performed?  
 4 A. Yes.  
 5 Q. Okay. So I think you were saying  
 6 that these older devices -- which -- I'm sorry.  
 7 Strike that.  
 8 Which devices are you thinking of  
 9 when you say older devices were not automated  
 10 and might have required manual testing that  
 11 were being used after November 2009?  
 12 A. I don't recall certain device names  
 13 with certain features exactly. But some  
 14 patients in clinic could have a device  
 15 implanted ten years prior to the time in  
 16 question that did not have automated features.  
 17 Q. And for such a device, when you say  
 18 you needed to perform testing manually, what  
 19 kind of testing do you mean when you made that  
 20 statement?  
 21 A. A lead pacing threshold test would  
 22 require me to lower either voltage or  
 23 milliseconds until I visually saw loss of  
 24 capture with that lead.  
 25 Q. And is that just one example of what



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you mean by "performing testing manually"?

A. Yes.

Q. So there's lots of other examples which -- is that fair to say, for these older devices?

A. Not lots.

Q. A handful? Five?

A. Yeah.

Q. Is that testing that you're talking about what it means to interrogate these older devices, or is it a different type of testing?

A. "Interrogate" means communicate between device and programmer.

Q. So would the manual testing we were talking about be different from interrogating a device?

A. It's part of the device follow-up.

Q. That's different from interrogating the device?

A. Yes.

Q. And would the type of manual testing that needed to be performed when a device wasn't automated be different depending on the type of older device that you're dealing with?

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A. Yes.

Q. Is there anything else that you did as a tech field engineer between 1996 and January '07 that we haven't talked about yet this morning?

A. Support district needs.

Q. What do you mean by "support district needs"?

A. A ninth-hour request to, perhaps, see a patient in a hospital environment is an example.

Q. What do you mean by a "ninth-hour request"?

A. We are not aware of it the day before.

Q. So unscheduled?

A. Unscheduled.

Q. Is there anything else that we haven't talked about this morning that you did as a tech field engineer between 1996 and January 2007?

A. Not that I recall.

MS. MAYER: Why don't we take a break.

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THE VIDEOGRAPHER: We are going off the record at 10:20.

(Recess taken from 10:20 a.m. to 10:34 a.m.)

THE VIDEOGRAPHER: We are back on record at 10:34.

BY MS. MAYER:

Q. Ms. Forney, in January 2007, your position at Medtronic changed?

A. Correct.

Q. What was your new position?

A. Continuum manager.

Q. And how long did you hold that position at Medtronic?

A. From 2007 until 2009.

Q. Do you know about when in 2009?

A. June 2009.

Q. And was the position of continuum manager a position with the cardiac rhythm management division?

A. Yes.

Q. And just so we clear out the rest of your time at Medtronic, what position did you move to in June of 2009?

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A. District service manager.

Q. Also in cardiac rhythm management?

A. Yes.

Q. And did your -- how long were you a district service manager in cardiac rhythm management? Until when?

A. Until November of 2011.

Q. And what position did you move to in November of 2011?

A. So I moved to the research coordinator position at Lancaster General Hospital in February 2012.

Q. So your role as the district service manager at Medtronic in cardiac rhythm management ended in November 2011?

A. Yes.

Q. And did you hold any other positions at Medtronic after that?

A. No.

Q. So did your employment -- when did your employment terminate with Medtronic?

A. January 2012.

Q. What was your role at Medtronic between November 2011 and January 2012?



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A. It was a reduction in force.

Q. Were you still working between November 2011 and January 2012?

A. No.

Q. Okay. So your last day working at Medtronic was at some point in November 2011?

A. Yes.

Q. Was it the beginning of the month or toward the end of the month?

A. I'm thinking --

Q. Before or after Thanksgiving?

A. -- it was before. Yeah, earlier.

Q. So earlier, first half of the month, approximately.

And you didn't work for anyone in between mid-November, roughly, 2011 and when you started the research coordinator position at LGH in February 2012?

A. Correct.

Q. So in your -- let's turn back to January 2007 to June 2009. I think you said you were a continuum manager?

A. Yes.

Q. What is a -- what was a continuum

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manager?

A. I created -- I collaborated with in-house or corporate Medtronic education department to improve CRM field education, workflow.

Q. Is that everything that you did as a continuum manager?

A. Yes.

Q. Who did -- I'm sorry. Let me take a step back. Who did you -- strike that.

Who did you coordinate with at in-house corporate Medtronic education during your time as a continuum manager?

A. The education department employees.

Q. Was there one or two people who were your principal collaborators in the education department?

A. I'd say team.

Q. Who was on that team?

A. Mary, Scott, Andrus, Rich, Diane, Kelly.

Q. What was Mary's last name?

A. I can't recall.

Q. Do you recall the last names for

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Scott, Andrew, Rich, Diane or Kelly?

A. Scott Andrus, I think, was his last name. Kelly Idle.

It will come to me.

Q. And that's everybody that you remember from the education department team, Mary, Scott Andrus, Rich, Diane and Kelly Idle?

A. Angie Bents; Diane's last name is Depp. That's the bulk of them.

Q. Did you interact with anybody else at corporate Medtronic other than the team from the education department while you were continuum manager?

A. Probably.

Q. Would it have just been in passing, or was there anybody else at corporate Medtronic, aside from the education department team, that you worked with regularly on your collaboration to improve CRM field education and workflow?

A. I'd say informally, I'd interface with other departments.

Q. What other departments?

A. Marketing.

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Q. Was there a principal point of contact for your interface with marketing?

A. Her name was Liz.

Q. Did you informally interface with departments other than marketing?

A. A component of marketing would be branding.

Q. Was Liz your point of contact for that as well?

A. I don't remember.

Q. Any other informal interface with departments at Medtronic corporate?

A. Field -- I'm not sure of the name. They would manage the field communications.

Q. Did you have a primary point of contact for that group within Medtronic corporate?

A. Don O'Hearn was the head.

Q. Is that male, D-O-N, or a woman?

A. Male. Don O'Hearn was the head of it. I don't recall a specific person.

Q. What -- was there anyone else that you worked with in CRDM or in cardiac rhythm management, on this collaboration that you were

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1 CATHLEEN FORNEY  
 2 doing as a continuum manager? Or were you  
 3 really working just with corporate people?  
 4 A. Field, technical field engineers.  
 5 Q. Any other positions within cardiac  
 6 rhythm management? And, you know, if you want  
 7 to just give me a list of all of the types of  
 8 positions that you worked with on this  
 9 collaboration.  
 10 MS. BURKE: Object to form.  
 11 THE WITNESS: District service  
 12 managers.  
 13 BY MS. MAYER:  
 14 Q. Is that everyone?  
 15 A. Maybe an occasional clinical  
 16 specialist.  
 17 Q. So when you say that, you know, the  
 18 project was to improve CRM field education and  
 19 workflow, what does that mean? Could you  
 20 explain it, please.  
 21 A. I taught devices in the field from  
 22 an integrative approach versus a siloed  
 23 approach, siloed product approach.  
 24 Q. What do you -- is that everything  
 25 that your work entailed during this time?

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1 CATHLEEN FORNEY  
 2 A. Educating the field to the new  
 3 education approach.  
 4 Another person I worked with was  
 5 Krista Sandstrom in organizational development.  
 6 Q. Is that organizational development  
 7 within cardiac rhythm?  
 8 A. Yes. And an education consultant,  
 9 Karen Steinhilber.  
 10 Q. Was she outside Medtronic?  
 11 A. Yes.  
 12 Q. And Liz in marketing and Don O'Hearn  
 13 in field and the branding folks, that was  
 14 marketing, branding and managing field  
 15 communications within CRDM?  
 16 A. Yes.  
 17 Q. And the education department was the  
 18 education department, Mary, Scott Andrus,  
 19 Andrew, Rich, Diane, Kelly, Angie, those were  
 20 the education department within CRDM; right?  
 21 A. Yes.  
 22 Q. So you taught devices in the field  
 23 from what you described as an integrative  
 24 approach rather than a siloed product approach  
 25 and educated the field to this new education

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1 CATHLEEN FORNEY  
 2 approach. And that was -- that was your job?  
 3 That was everything for those two years, 2007  
 4 to 2009?  
 5 MS. BURKE: Object to form.  
 6 THE WITNESS: State that again,  
 7 please.  
 8 BY MS. MAYER:  
 9 Q. So you taught devices in the field,  
 10 from, you said, an integrative approach, rather  
 11 than a siloed product approach, and educated  
 12 the field to the new education approach?  
 13 A. I created the program, contributed  
 14 to the creation of the program that executed  
 15 those things.  
 16 Q. Okay. Sometimes within a company,  
 17 if you create a new program, the company puts a  
 18 brand name on it, for lack of a better word.  
 19 Did the program that you contributed  
 20 to creating during this time have a name at  
 21 Medtronic or within CRDM?  
 22 A. I recall a brand picture. I don't  
 23 recall the brand verbiage.  
 24 Q. Okay. When you say that you created  
 25 a program that taught devices in the field from

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1 CATHLEEN FORNEY  
 2 an integrative approach rather than a siloed  
 3 product approach, could you explain what you  
 4 mean by that, please.  
 5 MS. BURKE: Object to form. I  
 6 believe her testimony was slightly  
 7 different than what you just said. I  
 8 believe she said she contributed to.  
 9 THE WITNESS: Historically, as  
 10 Medtronic launched its major products,  
 11 major product types, it was pacemakers,  
 12 implantable cardiac defibrillators and  
 13 cardiac resynchronization therapy devices.  
 14 So training historically was  
 15 conducted in each of those three silos  
 16 separately.  
 17 MS. BURKE: Is there a question  
 18 pending?  
 19 BY MS. MAYER:  
 20 Q. Is that your -- are you done  
 21 answering?  
 22 A. I believe so.  
 23 Q. Okay. Sorry, I wasn't sure.  
 24 A. Oh.  
 25 Q. So what was the integrated approach

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1 that you contributed to creating?

2 A. Taking the common elements in those  
3 three silos and teaching first to the  
4 commonness of products, similarity of products.

5 Q. Who were -- sorry, strike that.

6 What was the -- sorry, strike that.

7 What are some examples of the common  
8 elements between pacemakers, ICD devices and  
9 cardiac resynchronization therapy devices that  
10 you taught first through the program you  
11 contributed to creating?

12 A. An example is each of those products  
13 have a lead.

14 Q. And what were you teaching the field  
15 to do with respect to the devices in these  
16 education programs?

17 A. I collaborated on creating materials  
18 which was then used to teach the field.

19 Q. So did you teach the field yourself  
20 or just collaborate on the materials used to  
21 teach the field?

22 A. For those materials, I just  
23 collaborated on creating them.

24 Q. And by "those materials," you mean  
25

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1 materials that -- well, what do you mean by  
2 "those materials"?

3 A. Materials to product education.

4 Q. Okay. And so I think you said you  
5 taught devices in the field from an integrative  
6 approach.

7 A. When I was in the district as a TFE,  
8 I taught an integrative approach.

9 Q. But as a continuum manager, you did  
10 not teach devices in the field?

11 A. Correct.

12 Q. Okay. You developed materials for  
13 others -- you contributed to the development of  
14 materials for others to use in teaching the  
15 field using this integrated approach?

16 A. Yes.

17 Q. Okay. And you said this was, I  
18 think, product education? Is that correct?

19 A. Yes.

20 Q. And by "product education," what do  
21 you mean? Is that just, here's what our  
22 products are and how they work, or is it  
23 something different than that?

24 A. It's the education a field employee  
25

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1 must complete to be certified to conduct  
2 implants and follow-ups in the field.

3 Q. And I think we spoke earlier about  
4 what it meant to conduct an implant and what it  
5 meant to conduct follow-up in the field. Is  
6 that right?

7 A. Yes.

8 Q. And you mean the same thing here;  
9 correct?

10 A. Yes.

11 Q. So what was the education that a  
12 field employee was required to complete in  
13 order to be certified to conduct implants and  
14 follow-up use in the field at the time that you  
15 were a continuum manager?

16 A. Initially it was a course for each  
17 of the three products I mentioned prior.

18 Q. And then?

19 MS. BURKE: Object to form.

20 BY MS. MAYER:

21 Q. After -- after it -- at some point  
22 did it change from being a course for each of  
23 the three products?

24 A. Yes.  
25

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1 Q. And what did it change to?

2 A. A device function course, an implant  
3 course and a follow-up course.

4 Q. And you were -- you contributed to  
5 the creation of the new -- of the content for  
6 the new courses?

7 A. Yes.

8 Q. What was your role as a contributor  
9 to the content of those courses?

10 A. The integrative approach and the  
11 field materials, prestudy -- prestudy  
12 materials, learning-support materials.

13 Q. In the device function course,  
14 how -- what was covered in the device function  
15 course, the content of the course?

16 A. Device function, device algorithms,  
17 from the perspective of what was common across  
18 all three product lines.

19 Q. Was there anything else that was  
20 covered in the device function course?

21 A. I didn't teach the class. I'm  
22 thinking there was a practicum.

23 Q. Why do you think there was a  
24 practicum?  
25

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A. Just for hands-on experience.

Q. So in the design -- the device function course for all three categories of devices, the function of the devices was covered and the algorithms from the perspective of what was common across the three product lines, and there was a practicum.

Was there instruction in the design function course on, for example, the device algorithms from the perspective of what was not common across all three product reasons?

A. Yes.

Q. And have we covered everything that was covered in the design function course at this point?

A. I assume so. I didn't teach the class.

Q. Based on your role collaborating with the development of the materials for the class, are you aware of anything in the materials that we haven't covered for the design function course?

A. So the materials I created and contributed to were more of the prework that

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was conducted leading up to the class.

Q. So when you said that your role as a contributor included the field materials, the prestudy materials and the learning supplement materials, the bulk of your work was on the prestudy materials?

A. Yes.

Q. Do you have an understanding about what was covered in the implant course?

A. I can speak to the generalities, as I did not teach the class.

Q. What's your general understanding of what was covered in the content of the implant course?

A. How leads are implanted, testing of leads, device connectology, documentation of case, and there's probably a practicum, practicing.

Q. And do you have a general understanding of the content of the follow-up course?

A. Yes.

Q. And what's your general understanding of the content of the follow-up

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course?

A. Device interrogation, review of data, interpretation of data, troubleshooting data, device programming, probably patient interaction skills.

Q. And does that cover everything that is within your general understanding of the content of the follow-up course?

A. Yes.

Q. And what we just discussed prior to that -- how leads were implanted, testing leads, device connectology, documentation of the case and a practicum -- is that everything that you understand generally was the content of the implant course?

MS. BURKE: Objection to form. The testimony speaks for itself, and I think you omitted one item.

You may answer.

THE WITNESS: After connecting the device, there's also device testing.

BY MS. MAYER:

Q. And that covers everything that you generally understand was the content of the

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implant course?

A. Yes.

Q. For the prestudy materials that you were primarily involved in developing, was the content of the prestudy materials for each of the three courses consistent with your understanding of the content of the courses?

A. It also include -- included additional items.

Q. What kind of additional items did the prestudy materials include?

A. A coaching course for district service managers and performance-based activities to guide the new employee to a variety of experiences, to a variety of field experiences.

Q. So the coaching course for DSMs and the performance-based activities for new employees were part of the prestudy materials?

A. Yes.

Q. And other than those two things, the content of the prestudy materials was consistent with your general understanding of the content of the three courses?

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A. Yes.

Q. Have we covered everything that you did as a continuum manager from January 2007 to June 2009?

A. I was involved in teaching the district service manager courses across the US, collaborated in teaching those courses.

Q. What do you mean by "collaborated in teaching"?

A. HR also taught components of the coaching class.

Q. When you say you taught DSM courses or collaborated in teaching DSM courses, are you referring to the coaching class that you just mentioned?

A. Yes.

Q. What was, generally speaking, the content of the coaching class that you taught with HR?

A. Coaching new learners, components that make a good coach, to encourage learning, practice coaching with new materials.

Q. So it sounds like this is a class for DSMs to teach DSMs how to coach the people

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they manage. Is that fair to say?

A. Yes.

Q. So it was focused on how to teach and mentor rather than how to perform technical functions on Medtronic products?

A. How to wrap coaching around the entire learning process for the new hire in the field.

Q. And can you explain for me generally what you mean by "coaching" in this context?

A. Engaging the new hire to their assigned activities versus a learner learning on their own.

Q. Is there anything that you did as a continuum manager between January 2007 and June 2009 that we haven't talked about yet?

A. Not that I recall.

Q. So in June 2009, you became a district service manager in cardiac rhythm and management?

A. I transitioned from that to district service manager.

Q. Okay. Was that a promotion?

A. I don't know if it was seen as a

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promotion.

Q. Did your compensation increase?

A. Slight increase.

Q. What do you mean by "slight," approximately?

A. When you work in corporate, you don't have bonus structures. When you work in the field, you have bonus compensation structures, which increases salary.

Q. Other than that difference, was your compensation the same?

A. In the ballpark.

Q. When you moved from the tech field engineer position to the continuum manager in January of 2007, did your compensation change?

A. Yeah, I think it might have even gone down.

Q. Why did you take the position as a continuum manager after being a field engineer for 12 years?

A. Growth opportunity.

Q. What was the growth opportunity with the lower paycheck?

A. Impact how learning was done across

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all of Medtronic.

Q. And why did you make the change from continuum manager to DSM, district service manager, in June of 2009?

A. There was a reduction in force, and the project was done.

Q. So the continuum manager position ended?

A. Uh-huh.

MS. MAYER: Can you read back her answer.

(Record read.)

MS. BURKE: Thank you.

THE WITNESS: Yes.

BY MS. MAYER:

Q. I think you said that as a continuum manager it was more of a corporate position; correct?

A. Yes.

Q. Were you still working out of Pennsylvania, or did becoming the continuum manager involve a relocation for you?

A. A lived in Pennsylvania.

Q. Was it a remote position, or was



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there a workplace in Pennsylvania that you were based out of?

A. I -- it was a hybrid.

Q. A hybrid of what and what?

A. Working out of my home and spending time in Minneapolis.

Q. And when you became a district service manager, was that a district service manager for a particular geography?

A. Eastern Pennsylvania.

Q. Did that require relocation, or were you able to stay in your same location in Pennsylvania?

A. I stayed in my same location in Pennsylvania.

Q. During the time that you were district service manager, is that -- were you a field employee or --

A. Yes.

Q. -- were you a different kind of employee? Field employee. Okay.

What other types of field employees, during the time you were district service manager were in the cardiac rhythm unit?

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A. Within the district?

Q. Sure.

A. A district manager, sales reps, district service manager, clinical specialist, technical field engineer.

Q. What was the difference in role between, for starters, a clinical specialist and a technical field engineer?

A. Clinical specialist provided service only. A technical field engineer, I think their title might have changed to technical field educator and continued to provide education and support on new products.

Q. So at the time that you were a district service manager, the clinical specialists provided service only; and the technical field engineers or educators provided education and support on new products?

A. Yes.

Q. Did clinical -- did both clinical specialists and the technical field engineers or educators support implants?

A. Yes.

Q. And did both support post-implant

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follow-up?

A. Yes.

Q. Did the position of technical field engineer or educator -- was it the same role and responsibilities while you were a DSM as it had been when you were a technical field engineer?

A. Yes.

Q. And in terms of the clinical specialist, you said that they provided service only. What, other than supporting implants and providing follow-up to implants, were the services that clinical specialists provided?

A. Those were primary ones.

Q. And what was your role as a district service manager?

A. I managed the clinical specialists.

Q. Did you manage the technical field engineers or educators?

A. Informally.

Q. What do you mean by "informally"?

A. I think their reporting structure changed, and they reported to the district manager.

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CATHLEEN FORNEY

Q. And did the sales reps report in to the district manager?

A. Yes.

Q. And who did you report in to?

A. The district manager.

Q. Who was the district manager when you became a DSM?

A. Brian Dye.

Q. And did your district manager change during your tenure as the district service manager, or was it always Brian Dye?

A. Just Brian Dye.

Q. How many clinical specialists did you manage during your time as a DSM?

A. I'd say six to seven.

Q. Was that six to seven at one time or six to seven because clinical specialists came and went over that two-year period?

A. At one time.

Q. And how many technical field engineers or educators were in your district during the time that you were a DSM, at one time in your district?

A. One.



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Q. Just one? Okay.

And how many sales reps were in your district at one time while you were a DSM?

A. Seven.

Q. Were the same six or seven clinical specialists, clinical specialists during your tenure as a district service manager, or was there a turnover?

A. Can you ask that again, please.

Q. Sure. I think you said there were six to seven clinical specialists at one time in your district while you were a district service manager; correct?

A. Yes.

Q. Was it the same six to seven people, individuals, during the --

A. Yes.

Q. -- time that you were district service manager?

A. Yes.

Q. Okay. Who were they? What are their names, first and last, all of them, please.

A. Dick Conklin, Paul Rafferty, Frank

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Ammarell, Bobbie Ewing, Beth Coyle, Rachel -- her last name started with an S -- and Marla -- her last name will come to me -- Lyons.

Q. And who was the -- was it always the same single technical field engineer or educator while you were a DSM?

A. Norm Spotts.

Q. And he was there the whole time that you were a district service manager as the technical field engineer or educator?

A. He became one during my time there.

Q. And was there someone different in that role when you started as the district service manager?

A. I don't think there was.

Q. So maybe you didn't -- so you didn't have a technical field engineer or educator when you first started as a DSM and got Norm along the way?

A. Yes.

Q. Okay. What were your responsibilities as a district service manager?

A. Managing the clinical specialists.

Q. Was there anything else, or was that

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the entirety of your responsibility as a district service manager?

A. Support district initiatives.

Q. Is that everything?

A. Filled in clinics as needed, hiring, encouraging learning, supporting corporate initiatives to increase sales.

Q. Is increase sales a separate one, or is that just part of supporting corporate initiatives?

A. Corporate initiatives.

Q. So that's everything?

A. That I can recall.

Q. Okay. You said "filled in clinics as needed." Filled in for whom?

A. If no one was available.

Q. And by "no one," do you mean a clinical specialist or someone else?

A. Entire district staff are tied up.

Q. So when you said filled in at a clinic, what type of Medtronic position would you be filling in for?

MS. BURKE: Asked and answered.

Object to form.

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THE WITNESS: All field employees are trained to the same skill sets.

MS. MAYER: So motion to strike as nonresponsive.

BY MS. MAYER:

Q. When you say you're filling in for clinics as needed, what type of employee at Medtronic would you be filling in for?

MS. BURKE: Object. You may proceed.

THE WITNESS: Any field employee.

BY MS. MAYER:

Q. So it could be a sales representative?

A. Uh-huh.

MS. BURKE: Can you read that answer back, please.

(Record read.)

THE WITNESS: Yes.

BY MS. MAYER:

Q. When you filled in at a clinic for a sales representative when you were a district service manager, what -- did that happen while you were a district service manager, first of

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1 CATHLEEN FORNEY  
 2 all?  
 3 MS. BURKE: Can you read that  
 4 question to me?  
 5 (Record read.)  
 6 THE WITNESS: Yes.  
 7 BY MS. MAYER:  
 8 Q. How often?  
 9 A. I don't know.  
 10 Q. More than one?  
 11 A. Yes.  
 12 Q. More than three times?  
 13 A. I filled in as the schedule needed  
 14 an extra person to accomplish the district  
 15 work.  
 16 MS. MAYER: So objection; move to  
 17 strike the answer as nonresponsive.  
 18 BY MS. MAYER:  
 19 Q. Did you fill in for sales  
 20 representative more than three times?  
 21 MS. BURKE: Objection.  
 22 THE WITNESS: Yes.  
 23 BY MS. MAYER:  
 24 Q. When you filled in -- did you fill  
 25 in for a sales representative more than 100

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1 CATHLEEN FORNEY  
 2 times?  
 3 A. Clinical specialists did the  
 4 majority of device checks. If they're busy, a  
 5 sales rep could step in, or I could step in.  
 6 We stepped in for each other.  
 7 Q. So when you filled in at clinics,  
 8 you were filling in for clinical specialists --  
 9 MS. BURKE: Objection.  
 10 BY MS. MAYER:  
 11 Q. -- correct?  
 12 MS. BURKE: Object to form.  
 13 THE WITNESS: No.  
 14 BY MS. MAYER:  
 15 Q. Did sales reps do device checks --  
 16 sorry, strike that.  
 17 Did sales reps do device checks  
 18 unless -- sorry, strike that.  
 19 Did sales reps do device checks  
 20 without doing it to fill in for a clinical  
 21 specialist?  
 22 A. Yes.  
 23 Q. So was it part of the role of a  
 24 sales representatives to do device checks?  
 25 A. Yes.

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1 CATHLEEN FORNEY  
 2 Q. And they went -- I think you said  
 3 all field employees were trained to the same  
 4 skill sets; correct?  
 5 A. Yes.  
 6 Q. So they went through the same  
 7 training and certification process as clinical  
 8 specialists?  
 9 A. Yes.  
 10 Q. And when you said "filled in at  
 11 clinics as needed," were you referring to doing  
 12 anything at the clinics other than device  
 13 checks?  
 14 MS. BURKE: Objection to form.  
 15 THE WITNESS: No.  
 16 BY MS. MAYER:  
 17 Q. You said your responsibilities as a  
 18 DSM included supporting district initiatives?  
 19 A. Yes.  
 20 Q. What were the leading district  
 21 initiatives during your -- that you supported  
 22 during your time as a DSM?  
 23 A. Tracking programmers, using product  
 24 before expiration, activities as such that  
 25 corporate would ask us to do.

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1 CATHLEEN FORNEY  
 2 Q. Do you recall any significant  
 3 district initiatives during your time as a DSM  
 4 other than the two you've mentioned, tracking  
 5 programmers and using product before  
 6 expiration?  
 7 MS. BURKE: Object to form;  
 8 mischaracterizes the record.  
 9 THE WITNESS: Using Salesforce as a  
 10 new calendaring system.  
 11 BY MS. MAYER:  
 12 Q. Any other significant district  
 13 initiatives that you supported as a DSM?  
 14 A. Product management.  
 15 Q. What do you mean by "product  
 16 management"?  
 17 A. Carrying only the product needed.  
 18 Q. And by "carrying," do you mean  
 19 physically carrying with you only the product  
 20 needed?  
 21 A. Yes.  
 22 Q. Did product management include  
 23 anything other than making sure that you carry  
 24 only the product needed?  
 25 A. Using product before expire date is

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a component of that.

Q. Okay. And anything else involved in product management, other than using product before expiration date and making sure you're carrying only product needed?

A. Tracking programmer serial numbers would be a component of that.

Q. All right. And now have we covered everything that was part of the product management initiative that you supported when you were district?

A. That I can recall.

Q. Okay. So we have the product management district initiatives and the use of Salesforce as a new calendaring system district initiative.

Were there any other significant district initiatives that you supported as a DSM?

MS. BURKE: Object to form.

THE WITNESS: New product sales.

BY MS. MAYER:

Q. What was the district initiative for new products sales?

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A. It would be a corporate initiative that district would execute.

Q. And so when you said that you supported district initiatives and you also supported corporate initiatives to increase sales, is the new product sales a corporate initiative to increase sales that you also supported in your district?

A. Yes.

Q. Okay. So putting aside corporate initiative to increase sales, have we talked about the district initiatives that you supported as a DSM?

A. We are supported -- I guess corporate initiatives might be customized at a district level. So I see them as similar but a little bit different.

Q. Okay. Why don't -- I'm going to turn to corporate initiatives, and we'll talk about whether -- what they were and whether any of them were customized at the district level that we haven't talked about yet.

A. Okay.

Q. So I think you mentioned new product

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sales was a corporate initiative that the district would execute. What other corporate initiatives did you support as a district service manager?

A. I supported Lean Sigma events.

Q. What other corporate initiatives did you support as a district service manager? And please tell me what all of them were.

MS. BURKE: Object to form.

THE WITNESS: I completed Lean Sigma training. I conducted A3s with clinics.

That's an example of corporate initiative.

BY MS. MAYER:

Q. Okay. So other than new product sales, supporting Lean Sigma events, completing Lean Sigma training and conducting A3s with clinics, were there other corporate initiatives that you supported as a DSM between June of 2009 and November of 2011?

A. Product management.

Q. Any others?

A. I supported a corporate individual that might come to the district to educate or be a resource for the field team or customers.

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Q. And that's everything in terms of corporate initiatives that you supported as a DSM?

A. That I can recall.

Q. Okay. In terms of the product management corporate initiatives, is that different from the product management district initiative that we discussed? Or are they the same initiative that was customized a little bit in your district?

A. Correct.

Q. Okay. So it was -- the corporate initiatives with respect to project management was focused on carrying the product needed, using product before expiration and tracking programmer serial numbers?

A. Correct.

Q. And you implemented that in your district?

A. Correct.

Q. Okay. You said you supported a corporate individual that might come to the district.

Who was the corporate individual?

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A. I don't recall, but it wasn't unusual to have -- or to invite a corporate resource to the field so a -- so the field staff or a customer could learn.

Q. And during the time that you were DSM, did corporate individuals come to talk to the field staff or customers about a particular topic, or was it just generally that this is a resource that was available as needed?

MS. BURKE: Object to form.

THE WITNESS: It was more the latter, as needed.

BY MS. MAYER:

Q. So someone from corporate that needed to be brought out to talk to the field staff or a customer about a particular defined topic?

A. Yes.

Q. And that was a corporate initiative that you supported while you were a DSM?

A. Yes.

Q. Do you recall any particular examples of a corporate individual coming and educating field staff or a customer on a

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CATHLEEN FORNEY

particular topic during your time as a DSM?

A. A field scientist, Ellen Rubin, worked with my -- or worked with clinical specialists on how to read a journal article.

Q. Do you remember other examples of bringing a corporate individual into the district to talk to the field staff or a customer about a particular topic or issue?

A. Lean Sigma is an example of that.

Q. Any other examples?

A. Not that I can recall at the moment.

Q. So I think you said you conducted A3s with clinics as part of a corporate -- providing support to a corporate initiative. What is -- what is conducting an A3?

A. An A3 is problem solving -- let me restate that.

A3 is the Lean approach to problem solve a problem, a more complex problem.

Q. Does A3 refer to something in particular?

A. It's a Lean Sigma term.

Q. Does it have a meaning, or is it just a term?

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A. It's just a term. A3 is the size of paper, like the A3 is -- that the problem is documented on.

Q. When did you complete Lean Sigma training?

A. I don't recall.

Q. Was it in -- close to the end of your time as a DSM, or was it earlier?

A. I was working on my second belt at the time of my leaving.

Q. Is that a green belt, a yellow belt?

A. It's a green belt.

Q. And what's the first belt?

A. Yellow.

Q. So did you have to do just one Lean Sigma training to get a yellow belt, or was it more than one?

A. There was -- I believe it was one for a yellow belt.

Q. Was it more for a green?

A. Yes.

Q. So with your Lean Sigma yellow belt, you were able to conduct A3s in clinics?

A. No.

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CATHLEEN FORNEY

Q. Did you need any Lean Sigma training to conduct A3s with clinics?

A. Green belt training.

Q. You needed green belt training. Okay.

So even though you didn't have your green belt, you had enough green belt training by the time you were conducting A3s with clinics to do the A3s?

A. You have -- one attends green belt training, then one -- then one conducts A3s.

Q. And then once you've attended green belt training and conduct the A3s, are you then able to get your green belt?

A. Yes.

Q. So had you completed the requirements for the green belt when you were terminated from Medtronic, or were you still working on conducting A3s and fulfilling that requirement?

A. It was conducted, just not handed in.

Q. Okay. How many A3s did you need to conduct for your green belt?

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CATHLEEN FORNEY

A. One.

Q. How many A3s did you conduct?

A. One.

Q. Which clinic did you do the A3 with?

A. I don't recall.

Q. What -- can you describe to me what you do when you conducted the A3 with the clinic.

A. It was a clinic problem that they're willing to collaborate with Medtronic, or myself as a representative of Medtronic, to help solve.

Q. And so the A3 is just identifying the problem and agreeing to collaborate, or is it more than that?

A. Devising a solution, implementing a solution, measuring the solution.

Q. What was the clinic's problem for the clinic you did the A3 with?

A. I don't recall.

Q. Did the clinic define the problem, or did you define the problem for the clinic?

MS. BURKE: Objection; lack of foundation.

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CATHLEEN FORNEY

THE WITNESS: The clinic defined the problem.

BY MS. MAYER:

Q. And did they come to you for help, or did -- how did it come to your attention that the clinic had this problem?

A. Likely because we served the clinic.

Q. But you don't recall?

A. It might be St. Luke's. I don't recall specifically.

Q. Do you believe it's St. Luke's, or do you not know?

A. I don't know.

Q. Does the clinic in an A3 devise the solution itself? How does the -- who devises -- strike that.

In an A3 for a clinic, who devises the solution?

A. It's often collaborative.

Q. So the clinic and the Medtronic representative working together?

A. Yes.

Q. And then the clinic implements the solution; correct?

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A. Yes.

Q. And the clinic measures the solution?

A. Yes.

Q. Okay. I think you said A3 is the Lean Sigma approach to problem solving a complex problem. Can you describe for me what that approach is?

A. It's a standard Lean Sigma approach.

Q. Which is what?

A. You identify the problem, explore solutions, finalize a solution, implement and measure.

Q. So I think you talked about your -- you had yellow belt training for Lean Sigma, and you had green belt training for Lean Sigma. Did you do any other Lean Sigma training while you were a DSM?

A. No.

Q. Did you do any other Lean Sigma training while you were employed by Medtronic in any capacity?

A. No.

Q. You conducted the A3 with this one

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clinic as part of your work on a green belt. Was there any work for a clinic or customer of Medtronic in connection with your getting the yellow belt?

MS. BURKE: Object to form.

THE WITNESS: Yes.

BY MS. MAYER:

Q. What was that work?

A. I believe it was helping a clinic become more efficient, supporting the Lean Sigma events in your area.

Q. Were those separate things -- helping a clinic become more efficient and supporting a Lean Sigma event in your area -- or were they the same thing?

A. Both.

Q. They were both different and the same? Sorry. Strike that.

Was the Lean Sigma event your providing help to a clinic to become more efficient?

A. Supporting -- ask that again, please.

Q. Sure. Let me strike that. Let me



1 CATHLEEN FORNEY  
2 start all over again here.  
3 I think you said that to get your  
4 yellow belt, you helped a clinic become more  
5 efficient.  
6 A. Uh-huh.  
7 Q. Okay. Let's just start there.  
8 First of all, what clinic did you  
9 help?  
10 A. Reading Hospital.  
11 Q. How did you select Reading Hospital  
12 for this project?  
13 A. They had a change in physician  
14 staff, and new physicians wanted to run their  
15 clinic more efficiently.  
16 Q. And when you say "the new physicians  
17 wanted to run the clinic more efficiently,"  
18 what did you understand that to mean?  
19 A. Firstly, for them, understanding the  
20 practice they walked into, how many patients,  
21 and creating consistent workflows, creating  
22 consistent follow-up workflows within their  
23 clinic.  
24 Q. Okay. And by "creating consistent  
25 workflows and consistent follow-up workflow,"

1 CATHLEEN FORNEY  
2 what does that mean?  
3 A. So I helped draft worksheets for  
4 their clinics.  
5 Q. And what -- was that a worksheet --  
6 how did the worksheet that you drafted help  
7 create consistent workflow?  
8 A. If one completed the worksheet and  
9 all the elements of the worksheet, it created a  
10 consistent approach.  
11 Q. A consistent approach to?  
12 A. Device clinic follow-up.  
13 Q. And how would having this consistent  
14 approach help make the clinic run more  
15 efficiently?  
16 A. If a worksheet was used and all the  
17 elements of the worksheet completed by internal  
18 staff or field representatives that would come  
19 in from manufacturers, their data set at the  
20 end of the follow-up would be thorough and  
21 complete.  
22 Q. And did Reading identify the  
23 problem, or did you identify the problem?  
24 MS. BURKE: Asked and answered.  
25 THE WITNESS: It was identified

1 CATHLEEN FORNEY  
2 probably with sales reps that had that  
3 account, clinical specialists that served  
4 the account and the customers in the  
5 account.  
6 BY MS. MAYER:  
7 Q. And how did you -- let me take a  
8 step back.  
9 How did you explore solutions with  
10 this account?  
11 A. We looked at their Paceart data and  
12 probably would have a sense of data that's  
13 missing and sat down and explored with  
14 physicians and clinic staff. It's a  
15 collaborative approach.  
16 Q. And if data is missing from a clinic  
17 day, does the clinic have to bring patients  
18 back? What's the consequence for the clinic if  
19 data is missing at the end of a clinic day?  
20 MS. BURKE: Object to foundation.  
21 THE WITNESS: It possibly could mean  
22 a patient might come back. It means when  
23 a database report is run that there's  
24 blank spots in there.  
25 BY MS. MAYER:

1 CATHLEEN FORNEY  
2 Q. What's the consequence if there's  
3 blank spots in the data?  
4 A. Your analysis of the data isn't  
5 accurate.  
6 Q. And if you observe gaps in the data,  
7 what's -- what does the physician/practice have  
8 to do to address that?  
9 A. There's often nothing they can do.  
10 Q. So why does it improve the  
11 efficiency of the clinic to design a process  
12 that avoids data gaps?  
13 A. It improves efficiency and accuracy  
14 because everyone is doing the same thing in the  
15 same way. Decreased variables.  
16 Q. Are they able to reduce the time  
17 spent during the clinics by using the  
18 worksheets?  
19 A. Possibly.  
20 Q. So device checks kind of get done  
21 faster and more accurately?  
22 A. Conducted more accurately and  
23 documented more accurately. So a worksheet  
24 promotes thoroughness, assures something is not  
25 missed.



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Q. How much time did you spend drafting the worksheet?

A. I drafted for numerous clinics.

Q. So for Reading, did you already have a template you could adapt for them?

A. I customized to what customers wanted for their specific clinics.

Q. How many pages is the worksheet? Is it just one page?

MS. BURKE: Object to form.

BY MS. MAYER:

Q. How many pages is the worksheet?

MS. BURKE: Object to form. Which worksheet, the Reading worksheet?

MS. MAYER: She said she customized worksheets for specific clients.

THE WITNESS: One or two.

BY MS. MAYER:

Q. And did you have a form worksheet that you customized, or did you just adapt, or did you do -- follow a different process?

A. A created a form and customized to each account.

Q. And how much time did it take you,

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approximately, to customize your form to one account?

A. I don't recall.

Q. An hour or two or more, do you think?

A. Well, there's conversations with the customer to know how they wanted the sheet, also part of that exploring process. The actual adjusting the sheet takes an hour or two.

Q. So other than Reading Hospital, what customers do you recall creating a customized worksheet for during your time as a DSM?

A. There were some small accounts in Upstate Pennsylvania. I believe Honesdale might have been one of those clinics.

Q. Who are some of the others?

A. I supported St. Luke's, Reading. I don't recall who all I helped with those.

Q. Do you have a sense of how many you helped with these? Was it -- I think you've listed three. Was it five?

A. Perhaps three to five.

Q. Three to five. And this was --

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these three to five clinics that you customized the worksheet for, that was work you did to get your yellow belt?

A. A portion of that would have been for the yellow belt.

Q. How much -- how many of those would have been for the yellow belt?

A. I don't recall.

Q. But you recall doing a couple of these outside the scope of getting the yellow belt?

A. Yes.

Q. I think you said you supported Lean Sigma events. What did you mean by "Lean Sigma events"?

A. Medtronic sent the Lean Sigma team in to conduct a Lean Sigma event at St. Luke's.

Q. And what was that event?

A. I'd say their Lean Sigma team did a follow-up clinic. "Event" is what my informal name of it would be.

Q. When you said they did a follow-up clinic, what do you mean by they did -- a -- what do you mean by "did"? Did they analyze

CATHLEEN FORNEY

the clinic? Did they perform device checks themselves? Just what do you mean by "did a follow-up clinic"?

A. They did a Lean Sigma event, which included analyzing clinic workflows, making change recommendations. Metrics would be decided upon.

A clinic cleanup happened. Metrics were collected, and metrics were analyzed and reported back to the customer.

Q. Was this a one-day event, or did it take place over a longer period of time?

A. The team would have come out more than once.

Q. And who was the Lean Sigma team that went to St. Luke's?

A. I don't recall their name.

Q. How many people are on the -- were on the Lean Sigma team that Medtronic sent to St. Luke's?

A. I believe there were two.

Q. Were you a part of the Lean Sigma team that conducted the event at St. Luke's?

A. I supported the event.

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Q. What was your role with respect to this event?

A. I would just support components of whatever they needed me in, or asked. So it could be helping with data collection. I was a part of the clinic cleanup. I was a part of the brainstorming.

MS. BURKE: Counsel, can we take a brief break to change tape? I don't want to have her testifying when the tape is out.

MS. MAYER: How much time do we have?

THE VIDEOGRAPHER: About two minutes.

MS. MAYER: Yeah, we can change the tape.

THE VIDEOGRAPHER: We are going off the record at 12:12.

(Recess taken from 12:12 p.m. to 12:23 p.m.)

THE VIDEOGRAPHER: We are back on record at 12:23.

BY MS. MAYER:

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Q. Ms. Forney, I forgot to ask you earlier today, are you on any medications, or is there any reason why you might not be able to testify truthfully today?

A. No.

Q. So, no, not on any medications? And there's no reason why you wouldn't be able to testify truthfully today; correct?

A. I'm on medication for my thyroid, but it does not affect my ability to witness truthfully here today.

Q. And it doesn't affect your memory; correct?

A. No.

Q. Thank you.

And there are no other medications that you're on today; correct?

A. No cold medications.

Q. No other medications; correct?

A. Correct.

Q. The Medtronic Lean Sigma event at St. Luke's, I'm going to just ask a few more questions about that.

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You said you supported the event, but you weren't the team that conducted the event; correct?

A. Correct.

Q. So do you know what -- do you have knowledge of what the particular problem was that the team was solving?

A. An inefficient clinic, and they had change in staff, change in physicians and wanted to run it differently.

Q. Do you know when this Lean Sigma event happened, roughly?

A. It was summer months.

Q. Summer of 2011?

A. No -- maybe. I'm guessing '10.

Q. When you said that the physicians wanted to run St. Luke's differently, what do you mean by that?

A. Run the device clinic differently. The Lean Sigma is an objective way to partner with them to find a great way forward.

Q. But you don't remember specifically how they wanted to run the clinic differently; right?

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A. I think workflows were just disheveled in general, change of staff, no one to think similarly and wanted to revamp how it was run.

Q. And did that revamp include doing more remote monitoring?

A. Increasing remote monitoring for less patients in the clinic.

Q. And how does remote monitoring reduce the number of patients in the clinic?

A. Patients' devices are interrogated remotely, and the data is sent overnight to the clinic to be evaluated the next day; versus the patient coming into the office and having staff conduct the interrogation or a Medtronic field representative to conduct the interrogation.

Q. So if the device is interrogated remotely, a Medtronic field representative isn't interrogating the device anymore; right?

A. Correct.

Q. And did your projects for Reading Hospital and St. Luke's and the third clinic that you remember also involve increasing remote monitoring?

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MS. BURKE: Object to form.

THE WITNESS: Increased remote monitoring with all devices. And another corporate initiative just came to mind and that would be, like, heart failure, CareLink.

BY MS. MAYER:

Q. And is CareLink a reference to remote monitoring?

A. Yes.

Q. So for -- I think we covered Reading and St. Luke's and the small account in Upstate Pennsylvania. But let me just ask more generally: For all of the three to five clinics that you mentioned working with earlier, in addition to creating and providing a worksheet to help with workflows, you also worked with them to increase remote monitoring?

MS. BURKE: Object to form.

THE WITNESS: Yes.

BY MS. MAYER:

Q. Which allowed interrogations to be done without a staff person doing it or a Medtronic field rep doing it; correct?

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A. Correct.

Q. I want to go back to the training initiatives or the corporate initiatives. I think you mentioned that one initiative was to use Salesforce.com?

A. Yes.

Q. Was that a district initiative, or was that a corporate initiative?

A. That was a corporate initiative.

Q. What was the initiative to use Salesforce.com?

A. I don't recall corporate's game plan or strategy around it initially. But ultimately it was clear that district offices were going away, and this was a tool to keep a district connected without a district office.

Q. What do you mean that "ultimately it was clear that district offices were going away"?

A. Medtronic announced that they were closing.

Q. Are these physical brick and mortar offices?

A. Brick and mortar offices across the

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United States.

Q. Was there a brick and mortar office in your district that was being closed?

A. Yes.

Q. Were there people that were being laid off as a result?

A. We had an admin who was laid off.

Q. Do you know about when this happened? Was this 2011?

A. April 2011.

Q. And so how was Salesforce going to replace admins in these brick and mortar offices?

A. The admin kept our schedule. As implants or cases were added on, they would call the admin, and the admin was responsible for finding somebody free to cover it if everyone else was tied up.

She was also responsible for sending out the schedule the night before the next day, which was just a reporting mechanism. She just reported what she was told.

Q. So the way it worked with the admin, she was a central person for physicians and

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physician offices to reach out to, to say, "I need someone from Medtronic to come out"?

A. Uh-huh.

MS. BURKE: Can you read that answer back, please.

(Record read.)

THE WITNESS: Yes.

BY MS. MAYER:

Q. So how was Salesforce going to replace the central scheduler? What was the plan?

A. The schedule could be put on Salesforce.com, which is a web-based application that field staff could have on their phones.

Q. Would there be an admin somewhere at Medtronic who would still receive calls from customers and enter data into Salesforce? Or how would that work?

MS. BURKE: Object to form.

THE WITNESS: Much of that shifted to the field to do.

BY MS. MAYER:

Q. What did that mean for the field

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1 CATHLEEN FORNEY  
 2 personnel in terms of what they had to do now  
 3 for the first time?  
 4 A. Added responsibility.  
 5 Q. So instead of calling the admin,  
 6 what would a customer do when they had a need  
 7 for a Medtronic --  
 8 A. They would call --  
 9 Q. -- field person? I'm sorry.  
 10 A. They would call their local sales  
 11 rep or tell the clinical specialists, whoever  
 12 was in the clinic or the implant arena that  
 13 day.  
 14 Q. Did they -- you said they'd call a  
 15 sales rep or they'd tell the CS or whoever was  
 16 in the implant arena that day.  
 17 Did they use other forms of  
 18 communication to tell reps or CSs that they  
 19 needed someone for a device check or an  
 20 implant?  
 21 A. Probably.  
 22 Q. Are you aware of any other ways in  
 23 which customers communicated with sales reps or  
 24 CSs other than by calling or tell them in  
 25 person when they were needed?

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1 CATHLEEN FORNEY  
 2 A. No.  
 3 Q. What happened?  
 4 A. They were not a fan of Salesforce as  
 5 a tool; and they shifted calendaring system to  
 6 Google Calendars.  
 7 Q. Do you know whose idea it was to try  
 8 Google Calendar?  
 9 MS. BURKE: Object to form.  
 10 THE WITNESS: It's my understanding  
 11 it was sales reps within my district, and  
 12 also other divisions of Medtronic had gone  
 13 that way.  
 14 BY MS. MAYER:  
 15 Q. When you say your understanding is  
 16 that there were reps within your district that  
 17 tried Google Calendar, how did you learn that  
 18 reps within your district were using Google  
 19 Calendar?  
 20 A. Initially, my clinical specialists  
 21 told me, but I could also see there was a lack  
 22 of the schedule on Salesforce.  
 23 Q. How did it come to your attention  
 24 that other districts at Medtronic were also  
 25 potentially using Google Calendar?

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1 CATHLEEN FORNEY  
 2 A. Could be by email.  
 3 Q. And Medtronic field representatives  
 4 had an electronic email account?  
 5 A. Yes.  
 6 Q. Okay. So if a customer calls a  
 7 sales rep or emails a sales rep or a CS and  
 8 says, you know, "I need to schedule a device  
 9 check or an implant," what was the next step  
 10 under Salesforce.com?  
 11 A. To enter the data into Salesforce  
 12 for the day and time and which clinic it was  
 13 and maybe approximately how many patients.  
 14 Q. And then was it the responsibility  
 15 of the CS or the sales rep who had taken the  
 16 call to find someone to cover that, or did they  
 17 cover it themselves? How did that work?  
 18 A. The night before, sales reps would  
 19 divide -- decide how to divide the workload the  
 20 next day and communicate that to their team.  
 21 Q. Did this transition from the admin  
 22 holding that responsibility to the  
 23 Salesforce -- the field sales organization  
 24 having to do it themselves go smoothly in your  
 25 district?

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1 CATHLEEN FORNEY  
 2 MS. BURKE: Object to form.  
 3 THE WITNESS: Brian Dye told me that  
 4 AF Solutions was using it. And Thacher  
 5 Paine told me that he heard that other  
 6 districts were also transitioning to it.  
 7 BY MS. MAYER:  
 8 Q. Did he tell you what districts he  
 9 had heard were transitioning to it?  
 10 A. No.  
 11 Q. And AF Solutions, is that part of  
 12 cardiac rhythm disease management, or is that a  
 13 different part of Medtronic?  
 14 A. I don't know.  
 15 Q. Do you know what AF Solutions is?  
 16 A. AF Solutions is the -- it's either  
 17 under CRM or it's a different component of  
 18 Medtronic that deals with all their AF products  
 19 and ablation, catheters, and that -- that sales  
 20 organization was separate from ours.  
 21 Q. Okay. What did you do -- did you  
 22 hear first from your CSs that reps within the  
 23 district were using Google Calendar, or did you  
 24 hear it first from Brian Dye or Thacher Paine?  
 25 A. I don't recall exactly who I learned

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1 CATHLEEN FORNEY  
 2 it from first, but I heard it.  
 3 Q. And was this after April 2011?  
 4 A. Yes.  
 5 Q. And what did you do when you heard  
 6 it, that reps in your district were using  
 7 Google Calendar?  
 8 A. So I inquired with Brian.  
 9 Q. What did you say to him in that  
 10 conversation?  
 11 A. We had been a part of the Salesforce  
 12 pilot from November of 2010, which was  
 13 continuing. We were an early district that  
 14 onboarded to it. And so the question was,  
 15 "What's not working?"  
 16 Q. And what was the substance of his  
 17 response?  
 18 A. The sales reps didn't like the  
 19 web-based approach; and it was also more  
 20 helpful for some of the sales rep's wives to be  
 21 able to see their spouses' schedules.  
 22 Q. And so what did you do after this  
 23 discussion with Brian Dye?  
 24 A. I talked to him about the lack of  
 25 HIPAA security around it.

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1 CATHLEEN FORNEY  
 2 Q. Did you explain the HIPAA issue to  
 3 him when you talked to him?  
 4 A. I explained the issue. I recall him  
 5 telling me not to be a martyr and to get  
 6 onboard with the rest of the district.  
 7 Q. And did you drop the issue at that  
 8 point, or did you take it to someone else?  
 9 A. So I had been in conversation with  
 10 IT just to confirm my concerns that they were  
 11 not unfounded, that they were actually  
 12 corporate concerns. And I had conversations  
 13 with Rui Gregorio, who was IT compliance.  
 14 Q. How did you know to reach out to IT  
 15 on this issue?  
 16 A. I think that's probably just a  
 17 common exploration. If you're not sure, you  
 18 reach out and ask questions.  
 19 Q. And you spoke with IT both for the  
 20 technical questions and also IT compliance?  
 21 A. Yes.  
 22 Q. Why did you talk to IT compliance?  
 23 A. So I don't know if it's -- I don't  
 24 recall the titles of some of the individuals I  
 25 talked to, so I don't know if it's IT

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1 CATHLEEN FORNEY  
 2 Q. And what was his response?  
 3 A. He wasn't concerned.  
 4 Q. What was your concern with respect  
 5 to HIPAA?  
 6 A. Medtronic did not have a contract  
 7 with Google. They were just setting up patient  
 8 information on the Google Calendaring system.  
 9 I had a clinical specialist that was asked to  
 10 create portals for customers to place their own  
 11 patient information out there and to contact  
 12 the district through Gmail that's associated  
 13 with Google, with their needs.  
 14 So there was email and calendaring  
 15 system that was combined together, which  
 16 certainly made it easier for staff in the field  
 17 that's busy doing cases all day and follow-ups  
 18 and to manage communications.  
 19 Q. So it's easier for the field, but  
 20 you had concerns that this violated HIPAA; is  
 21 that fair to say?  
 22 A. Yes.  
 23 Q. And I think you said Brian didn't  
 24 share your concerns?  
 25 A. No.

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 2 compliance or if it's just compliance.  
 3 But when Rui Gregorio shared with me  
 4 that he called Tom Lynn, a sales rep, and Tom  
 5 Lynn was very specific with him on how it was  
 6 being used and the value that it added, and I  
 7 recall Rui reaching out to me after our initial  
 8 conversation and confirming that it was  
 9 inappropriate use.  
 10 Q. Did you follow up with Brian Dye  
 11 after these conversations?  
 12 A. Yes.  
 13 Q. And what was -- what did you -- what  
 14 was the subject of that conversation?  
 15 A. I want to say Brian's conversations  
 16 with me really became minimal in the fall of --  
 17 you know, August 2011. I don't know if he  
 18 responded to me.  
 19 Q. When he had told you in the earlier  
 20 conversation not to be a martyr and to get  
 21 onboard with the rest of the district, did you  
 22 have an understanding about what he was trying  
 23 to convey to you?  
 24 A. I interpreted that I should not get  
 25 in the way and be a part of the Google



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Calendaring system that was being built out. So my name was added to the team on the Google Calendaring system so I could see what was going on.

Q. And you followed up on that by talking with IT and ultimately the conversation with IT compliance or compliance?

A. Yes. So Rui Gregorio reached out to my district and to -- I believe it would have been Jim Vogl, who was the corporate contact for the field; and Tom McSteen, who was a lawyer that was probably CRM compliance, my guess is. And they had a phone call with Brian and myself and asked that it be stopped.

And Rui also shared with me that he reached out to the RVP at the time in Medtronic -- I don't recall his name -- during that time frame.

Q. And did the use of Google Calendar stop at that point?

A. It did not.

Q. How did you learn that it hadn't stopped?

A. One could go in and look at the

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calendar being populated every day.

Q. And you were still on the communication list for Google Calendar?

A. Yes.

Q. Did you -- did you do anything when you saw that it was still going on?

A. I want to say that Rui had stayed in touch with me along the way, and he encouraged me to call corporate Medtronic's compliance hot number.

Q. And did you call the -- is that the Voice Your Concern hotline?

A. Yes.

Q. Did you call Voice Your Concern?

A. I called Voice Your Concern.

Q. And was there a response?

A. Not to me personally.

Q. Was it -- did you identify yourself on the call, or was it an anonymous call?

A. Anonymous call.

Q. Okay.

MS. BURKE: How much longer before the lunch break?

MS. MAYER: It's 12:51. I just want

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to --

MS. BURKE: No, I'm just getting a sense of how much longer are we going before lunch? My stomach is starting to growl.

MS. MAYER: Well, I'd like to finish this topic. So we're at 12:51. I don't think it's going to be --

MS. BURKE: Another half hour?

MS. MAYER: Something like that.

MS. BURKE: Okay.

BY MS. MAYER:

Q. So after you made the anonymous call to Voice Your Concern hotline, did the use of Google Calendar stop?

A. No.

Q. What did you do at that point?

A. I know Tom McSteen was also in contact with me. I asked him if he wanted to see evidence of it, like pictures; and he stated, no. He stated that he would reach out to Brian again.

Q. When he said "no," did you take him to be saying, "No, I'm not interested in your

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evidence," or something different?

A. I interpreted it as, no, he didn't want pictures, that he just trusted my words, that it was still ongoing.

Q. And do you know whether he had a conversation with Brian Dye?

A. He did.

Q. And did the use of Google Calendar stop after that?

A. No.

Q. And what did you do at that point?

A. I believe I was laid off the next day.

Q. You've alleged in this case that you believe you were terminated because you raised questions about the Google Calendars. Why do you believe that you were terminated because you raised questions about Google Calendars?

A. District managers are given a lot of freedom to conduct their business how they want; and this was causing a clear divide in my district because I was encouraging clinical specialists not to participate, and they were being asked to develop -- help build it out.

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And if they chose that to be a primary tool to facilitate their business, and I was getting in the way of them getting their business done, their follow-ups done, their implants done, then I'm a barrier.

And I also believe that to be true because Tom McSteen told me I was being retaliated against.

Q. Did he say by whom?

A. I think he probably stated Brian Dye.

Q. Were you given a reason for why you were terminated when you were terminated?

A. Reduction in force.

Q. Was there a reduction in force at that time?

A. I believe there was under 50 people across the field that was let go.

Q. Was there anyone else in your district that was let go?

A. One clinical specialist.

Q. Did someone replace you in your position as a DSM?

A. Yes.

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Q. Who is that?

A. Mike Jones.

Q. Is he a DSM over the same territory that you had?

A. Yes.

Q. Does he have other territories as well?

A. Since that time there's been consolidation of districts, so he now manages two districts, what would have been two districts in 2011.

Q. And when did that consolidation happen?

A. I don't recall.

Q. After you left?

A. Yes.

Q. Was he a DSM in another district before he took -- became a DSM after you were terminated, for your Pennsylvania district?

A. Yes. He was a DSM in Central PA.

Q. So did somebody else become a DSM in Central PA, or was that position terminated?

A. He -- he took over both districts.

Q. So when you were terminated, he

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stayed DSM of Central Pennsylvania and took over your district?

A. Correct.

Q. And later at some point those two districts were consolidated, or maybe even --

A. My understanding is.

Q. Your understanding, because you weren't there anymore?

A. Right.

Q. Got it.

So in this case, your -- it includes a number of allegations, one of which is that performing device checks, that having Medtronic perform device checks, is a felony, is a -- criminal kickback violation; is that correct?

A. Correct.

MS. BURKE: Kirsten, if we're going to move to a new topic, can we have a lunch break?

MS. MAYER: No, I'd like to finish this out quickly.

MS. BURKE: This isn't the same topic, and we've been going since 9:00. It's 1:00.

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MS. MAYER: We've had a couple of breaks, Susan. I'd like to finish this topic.

MS. BURKE: You want to finish the entire topic of kickbacks before lunch?

MS. MAYER: I'm going to -- I estimated 15 minutes ago we'd go a half hour to lunch. I'm going to go to lunch.

MS. BURKE: To 1:30?

MS. MAYER: Yes, and I don't appreciate you're objecting and asking for a break while a question is pending.

MS. BURKE: No, a question was not pending. I waited until an answer had been given.

I'm getting tired and hungry. I would like to have a lunch break. I think a 1:00 lunch break is pretty standard, and it appears you're going into a new topic. You had previously said you just wanted to --

MS. MAYER: Susan, I've given you my answer. We're going.

MS. BURKE: I object to not

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permitting the witness and her counsel to have a lunch break at 1 o'clock.

BY MS. MAYER:

Q. So in this case you've alleged that when Medtronic performs a device check, they're providing a kickback that violates a felony federal law; correct?

A. Correct.

Q. And yet you yourself -- sorry, strike that.

When was the first time you came to believe that performing -- that having Medtronic perform a device check was a violation of law?

A. It was a process.

Q. When was the first time that you came to the understanding that it was a violation of law for Medtronic to provide a device check?

MS. BURKE: Objection; asked and answered.

THE WITNESS: After I left Medtronic and took time to uncouple from 17 years -- almost 17 years of working for a company

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that I embarrassingly trusted everything they told me to be accurate and appropriate. And I was able to step back and not be in the weeds of day-to-day exhausting work but look 30,000 feet and see all the mutually dependent activities that I had asked -- been asked to perform or to be trained on so that I could serve customers at a very high, engaged, personal level; and experienced the Medtronic compliance system not work and that districts are given the freedom to conduct business however they want to be successful, I realized that the company I worked for and the work that I performed, that there was a large component that was inappropriate and all conducted ultimately to influence and to secure that quarter's -- as Dave Roberts would say, "the most important quarter ever," the implant numbers that were required of us, and relationships and service helped to sustain business in a changing world.

BY MS. MAYER:

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Q. So was it also after you left Medtronic that you came to believe that providing support for implants was also a felony kickback violation and illegal through this process that you've just described?

A. There are some implant procedures that are extremely mature, over 50 years where things have not changed, and the technical expertise to conduct them is not what we provide. It's just helping them belabor to get their job done.

Occasionally there are new products that come out that requires extra, additional skill sets, that the FDA states when a physician might have to do so many implants and then they're signed off, but then they should be technically competent; and it's a rare case that technical expertise is needed to support a successful implant with an experienced implant.

MS. MAYER: Motion to strike the answer as nonresponsive.

BY MS. MAYER:

Q. My question was: It was after you left Medtronic --

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MS. BURKE: Kirsten --

BY MS. MAYER:

Q. -- that you went through this process that you've described for us that you came to understand in your mind that supporting implants was illegal; correct?

MS. BURKE: Kirsten, you cannot move to strike an answer. You're being argumentative. We object to you using -- even using that term, "motion to strike," to convey your dissatisfaction with the answer.

And she's already answered the question that you gave.

MS. MAYER: No more speaking objections.

MS. BURKE: Then no more motions to strike.

MS. MAYER: Susan.

BY MS. MAYER:

Q. Can you -- do you remember the question?

A. Correct.

Q. Correct? And it was after you left

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Medtronic and went through this process that you've discussed that you came to have the understanding that you now have, that providing Lean Sigma advice was also illegal; correct?

A. Correct.

Q. And the other conduct that you allege in your complaint, in your First Amended Complaint and your Second Amended Complaint in this case, that you allege was illegal, you came to understand that the conduct was illegal in your mind all after you left Medtronic; correct?

A. After I uncoupled from Medtronic; correct.

Q. Which was after you left Medtronic?

A. Correct.

MS. MAYER: We can take a lunch break now.

MS. BURKE: Hour?

THE VIDEOGRAPHER: We are going off the record at 1:07.

(Luncheon recess taken from 1:07 p.m. to 2:21 p.m.)

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THE VIDEOGRAPHER: We are back on record at 2:21.

BY MS. MAYER:

Q. Ms. Forney, did you talk to your attorney, Ms. Burke, over lunch about the deposition today?

A. No.

Q. Did you talk to her about the substance of your testimony at all?

A. No.

Q. Did you talk to her about testimony you might give in the afternoon?

A. No.

Q. Or anything related to the case?

A. No.

Q. Ms. Forney, what did you do to prepare for today's deposition?

A. I reviewed my notes from -- that I took along the way at Medtronic. I reread my CV to try to remember dates. I sort of mentally went through the list of people I used to work with; and I did remember Mary's last name is Erickson. And reviewed some documents.

Q. Did you review any deposition

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transcripts or in preparation for today?

A. I did review some deposition transcripts.

Q. Which deposition transcripts did you review?

A. Dave Roberts. And I forget the name of the compliance person.

Q. Did you review any documents that haven't been produced to Medtronic in this case?

A. Ask that again, please.

Q. Did you review any documents that have not been produced to Medtronic in this case?

A. No.

Q. You said you reviewed your notes that you took along the way at Medtronic.

A. Just some items I had jotted down.

Q. During your time at Medtronic or since you left?

A. There might have been a portion of it that was before I left but mostly after I left.

Q. Have those notes been produced to

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Medtronic?

A. I don't know.

MS. MAYER: Susan, do you know?

MS. BURKE: I don't know exactly what she's referring to. I know there were some attorney-client privileged notes that weren't produced, so the only thing that's been withheld is something that's privileged.

I'm not sure -- I'm not sure what she's referring to, whether it's the same notes or different notes.

BY MS. MAYER:

Q. Are the notes that you're referring to notes that you've previous provided to Ms. Burke?

A. They're personal notes.

Q. So not previously provided to Ms. Burke?

A. Not previously provided.

Q. Were those notes reflecting communications with Ms. Burke?

A. No.

Q. Were they prepared at Ms. Burke's

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 2 request?  
 3 A. No.  
 4 Q. Do you have them with you today?  
 5 A. No.  
 6 MS. MAYER: We can talk about them  
 7 offline at another time.  
 8 BY MS. MAYER:  
 9 Q. Has any of your testimony today been  
 10 refreshed by your review of those notes, so  
 11 far?  
 12 A. Ask that again, please.  
 13 Q. Has any of your testimony today been  
 14 based, in part or in whole, on your review of  
 15 those notes?  
 16 A. No.  
 17 Q. Did you meet with your counsel in  
 18 preparation for today's deposition?  
 19 A. Yes.  
 20 Q. For how long?  
 21 A. Maybe three hours.  
 22 Q. I wanted to ask you a couple  
 23 questions about some individuals that have been  
 24 identified as witnesses in this case.  
 25 Are you familiar with someone named

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 2 Beth Coyle?  
 3 A. I am, yes.  
 4 Q. How do you know Beth Coyle?  
 5 A. Beth Coyle is a clinical specialist  
 6 who reported in to me.  
 7 Q. Have you spoken with Beth Coyle  
 8 about this case?  
 9 A. Yes.  
 10 Q. When did you first speak with Beth  
 11 Coyle about this case?  
 12 A. Perhaps about 18 months ago.  
 13 Q. And why did you reach out to her 18  
 14 months ago about this case?  
 15 A. I asked if I could put her name on a  
 16 witness list.  
 17 Q. And what did she say?  
 18 A. She said she'd consider it.  
 19 Q. What information do you believe she  
 20 has that is relevant to the case?  
 21 MS. BURKE: And I would simply  
 22 caution the witness not to reveal  
 23 attorney-client communications.  
 24 BY MS. MAYER:  
 25 A. Beth has worked inside of industry

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 2 and has experience performing responsibilities  
 3 asked of her as an employee of a district.  
 4 Q. Have you had conversations with Beth  
 5 about what she might -- what information she  
 6 might have that would be relevant to the case  
 7 yourself personally?  
 8 A. No.  
 9 Q. So 18 months ago you first reached  
 10 out to Beth Coyle, and she said she might be  
 11 willing to participate; is that right?  
 12 A. She would consider it.  
 13 Q. Okay. At some point did you have a  
 14 subsequent conversation with Beth Coyle about  
 15 this case?  
 16 A. I would say yes.  
 17 Q. When was your next conversation with  
 18 Beth Coyle about this case?  
 19 A. Last summer.  
 20 Q. And what was the substance of that  
 21 conversation?  
 22 A. Telling her that it was moving  
 23 forward and asking again if she would consider  
 24 being a witness.  
 25 Q. What did she say?

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 2 A. And I don't recall if I got an  
 3 affirmative yes, but she would be open to Susan  
 4 Burke calling her.  
 5 Q. And did you have any -- a subsequent  
 6 conversation with Beth Coyle about her  
 7 participation in the case?  
 8 A. No.  
 9 Q. And have you talked to Beth Coyle  
 10 since last summer?  
 11 A. I talked to Beth Coyle on a job  
 12 interview question she had for me, and that was  
 13 all.  
 14 Q. Is Beth Coyle still with Medtronic?  
 15 A. No.  
 16 Q. Where -- when did she leave  
 17 Medtronic?  
 18 A. I believe she left in 2012.  
 19 Q. And do you know where she's worked  
 20 since she left Medtronic?  
 21 A. No. I don't know every place she's  
 22 worked. Most recently she had worked at  
 23 Hahnemann Hospital.  
 24 Q. Do you know Doug Willwerth?  
 25 A. Yes.



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Q. Who is Doug Willwerth?

A. He's a clinical specialist that I worked with when I was a technical field engineer.

Q. So in 1996 to 2007 he was a clinical specialist that you worked with?

A. Yes.

Q. When you were a DSM between June 2009 and November of 2011, was he still a clinical specialist?

A. He was still a clinical specialist inside Medtronic.

Q. Did he work in a different place or a different capacity than when you had previously worked with him?

A. He worked in the same district, but I worked in a different district. So he did not work underneath me.

Q. When's the first time you spoke with him about this case?

A. About 18 months ago.

Q. And what was the substance of that conversation?

A. If he would consider being open to

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Susan Burke talking to him and if he would consider being a witness.

Q. And what did he say at that time?

A. I think he was open to Susan having a conversation with him.

Q. And did you speak with him again about the case?

A. No.

Q. And does he still work at Medtronic?

A. No.

Q. When did he leave?

A. I don't know.

Q. Why did you think Beth Coyle or Doug Willwerth might be interested in helping you with this case?

A. I approached people that were outside of Medtronic and didn't have to jeopardize their position or current role with Medtronic.

Q. Who -- do you know somebody named Chris Taylor?

A. Yes.

Q. Who is Chris Taylor?

A. Chris Taylor is a former TFE and

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sales rep.

Q. How do you know him?

A. I trained him as a TFE.

Q. And when's the first time you spoke with him about participating in this case?

A. About 18 months ago.

Q. And what was the substance of that conversation?

A. If he would be open to having a conversation with Susan Burke and consider being a witness.

Q. And what was his response?

A. He would be open to the conversation.

Q. Did you speak with him again after that point about this case?

A. Yes.

Q. When was that, the next time?

A. I spoke to him last -- about a year ago.

Q. And what was the substance of that conversation?

A. I'm -- I don't recall the details.

Q. Do you recall generally what was the

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substance of the conversation?

MS. BURKE: I'm going to just caution the witness not to reveal any attorney-client communications.

MS. MAYER: In her conversation with Chris Taylor? What would be the attorney-client?

MS. BURKE: He's a client as well, so if I was on the line, that would be an attorney-client communication.

MS. MAYER: Was he a client 12 months ago of yours?

MS. BURKE: I have to check my records as to when he first became a client.

BY MS. MAYER:

Q. You may answer the question.

A. I don't recall the details.

Q. Do you recall generally what the substance of the conversation was?

A. I probably shared the case was going before the Department of Justice and asked him if he would be open to conversation.

Q. With who?

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A. Susan Burke.

Q. And what was his response?

A. He would be open to Susan calling if she -- if she did.

Q. Okay. And did you speak with him again about this case?

A. I spoke to him again this summer.

Q. What was the substance of that conversation?

A. I don't recall the details.

Q. What was the substance generally?

A. I'm thinking it was the summer; I don't know exactly. But I asked him if he would consider Susan calling and being involved in the case.

Q. And what was his response?

A. He would be open to Susan calling.

Q. And did you have a subsequent conversation with Chris Taylor about this case?

A. I had a conversation on Sunday with him.

Q. Sunday, less than a week ago?

A. Of this week.

Q. Two days ago?

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A. Yes.

Q. And what was the substance of that conversation?

A. I think just conversing about how we remembered our jobs in the field during the time frame that we've been discussing.

Q. And was Chris Taylor employed by Medtronic during the time frame that's at issue in this case, November 2009 through -- you know, ongoing forward?

A. He left Medtronic. I don't recall when he left.

Q. During that time period or prior?

A. I'm thinking it was 2009.

Q. So he was -- was he a sales rep or a TFE when he left Medtronic in 2009?

A. He took a corporate job inside of Medtronic and was a director in education.

Q. When did he -- during what time period did he hold that job?

A. I don't know.

Q. But he was in that job when he left Medtronic?

A. Yes.

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Q. Do you know whether he held any other jobs within Medtronic other than a form -- being a TFE, a sales rep and the director of education in corporate?

A. I don't know.

Q. And that corporate job, that was in Minneapolis or somewhere else?

A. It was based in Minneapolis.

Q. Do you know someone named Dan DeBlass?

A. Yes.

Q. Who is he?

A. Dan was a clinical specialist that worked under me.

Q. When did you first talk to him about participating in this case?

MS. BURKE: Objection; foundation.

THE WITNESS: I think I ran into him this summer.

BY MS. MAYER:

Q. And at that time did you talk to him about this case?

A. I asked him if he would be open to Susan Burke calling him and considering being a

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witness.

Q. And what did he say?

A. He would be open.

Q. Did he tell you why?

A. No.

Q. Why did you think Dan DeBlass would be someone who would be a witness with relevant information in this case?

A. He was employed by Medtronic, performed clinics and implants; and it would be safer for him to talk because he was no longer with Medtronic.

Q. Do you know why he was no longer with Medtronic?

A. No.

Q. Do you know if he was terminated from Medtronic?

A. No -- wait. Ask that again.

Q. Do you know whether he was terminated from Medtronic?

A. No.

Q. Are you aware of whether he ever had any performance issues while at Medtronic?

A. I don't know all -- you know, I

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think he left Medtronic before I came to the district, so he was not under me. I don't know if he had performance issues.

Q. You're not aware of any performance issues?

A. I wouldn't have access to that. No.

Q. Okay. Did you reach out to anyone other than Beth Coyle, Doug Willwerth, Dan DeBlass and Chris Taylor about participating in this case?

A. Yes.

Q. Who else did you reach out to?

A. I reached out to employee an Boston Scientific.

Q. Who was that?

A. Karen Wright.

Q. When did you reach out?

A. I think it was this fall.

Q. And what -- what was the substance of the conversation?

A. She would be open to Susan Burke calling her and talking to her about the case.

Q. Have you talked with her since then about this?

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A. No.

Q. Why did you reach out -- why Karen Wright? Why did you think she was a good person to reach out to on this?

A. She worked for Medtronic marketing and education and worked closely with the fields.

Q. And what does she do for Boston Scientific?

A. She works in heart failure.

Q. Doing what?

A. I don't know.

Q. What was her position at Medtronic?

A. I knew her when she worked in marketing and was involved in virtual training on a truck.

Q. Have you reached out to anyone else?

A. I don't believe so.

Q. Have you identified any additional people that you believe might be a witness that might be interested in participating in this case?

MS. BURKE: Object to form.

THE WITNESS: I don't recall anyone

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outside of the list I already provided.  
BY MS. MAYER:

Q. The list you've just provided to me today, or are you referring to a different list?

A. The verbal list I just provided you right now.

MS. MAYER: I'm going to.

(Forney Exhibit 1, Relator's

Objections and Responses to Defendant Medtronic's First Set of Requests for Production, was marked for identification and attached to the transcript.)

BY MS. MAYER:

Q. I'm showing you what's been marked as Exhibit 1 to this deposition.

Do you see Document Request No. 1 on this page?

A. Yes.

Q. Have you seen this document before today?

A. Yes.

Q. The first request asks for all communications with the government, including

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but not limited to all documents produced or provided to the government in connection with or relating to the qui tam litigation or its allegations.

Have you provided or produced documents to the government in connection with this case?

A. Yes.

Q. What documents have you provided to the government in connection with this case?

A. They were documents that Susan gave to the government.

Q. Were they Medtronic documents?

A. Yes.

Q. Were there any documents other than Medtronic documents that you provided to the government?

A. Not that I recall.

Q. Which Medtronic documents did you provide to the government?

A. I provided documentation of Medtronic's compliance policy. I provided documentation of some training items. I provided documentation of HIPAA violations.

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I probably had a document to AvroMed. I don't recall all the documents. They were Medtronic-related.

Q. You've identified four -- you've identified the compliance policy, training items, HIPAA violations and a document to AvroMed, and you said you don't recall the rest of the Medtronic documents that you provided to the government.

Do you recall whether it was just two or three more documents or whether it was more than that?

A. A training document would have been -- an example of that would have been a -- I forget the name of the course, but it's a needs-based question approach, course for sales rep and for clinical specialists, teaching field staff how to ask explicit questions in order to understand customers' explicit needs in order for us to better meet the customers' needs.

Q. So do you recall overall whether you provided 10 or 12 documents to the government? Is that about the right number?

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MS. BURKE: Object to form.

BY MS. MAYER:

Q. Or was it less?

MS. BURKE: Object to form.

THE WITNESS: It was probably around a dozen. There was likely a marketing item in there also.

BY MS. MAYER:

Q. Aside from the dozen or so Medtronic documents that you've described, did you provide any other written materials to the government in connection with this case?

A. No.

MS. MAYER: Mark this as Exhibit 2. (Forney Exhibit 2, Civil Complaint, was marked for identification.)

BY MS. MAYER:

Q. I'd like to show you what has been marked as Exhibit 2 to today's deposition.

Have you seen this document before, Ms. Forney?

A. I haven't seen this front page.

Q. Have you seen the document attached to the front page that is titled "Complaint"?

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Next page down, I believe.

A. (Witness reviews document.)

Q. Do you need some time to review this to recall whether you've seen it before, Ms. Forney?

A. I'm just reviewing the entire stack.

Q. I'm happy to give you whatever time you need. We can go off the record if you need a little bit of time. Just please let me know.

A. Yes, I've seen this document.

Q. What is it?

A. This is the Complaint.

Q. In this case; correct?

A. Yes.

Q. I'd like to turn your attention to paragraph 6 on page 3.

In that paragraph, the second sentence says, "Relator Forney shared all information with the United States and Plaintiff States prior to filing suit under seal."

Do you see that?

A. Yes.

Q. Did you share any information with

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the United States and the Plaintiff States prior to filing suit under seal other than those 10 or 12 documents that we just discussed?

A. Can you ask that question again, please.

Q. Sure. Did you share any information with the United States and the Plaintiff States prior to filing suit in this case -- this Complaint, Exhibit 2 -- other than the 10 or 12 documents that we just discussed?

A. I did not share anything prior.

Q. Okay. So nothing was shared with the government prior to filing suit; it came after?

A. Perhaps I'm not understanding the question. I think the documents probably came with the case.

Q. But you -- to the best of your knowledge, you provided information to the United States and Plaintiff States, the 10 to 12 documents, after the complaint was filed; right?

A. Yes.

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Q. Okay. Did you -- when you shared the 10 or 12 documents, did you provide any other information to the United States and Plaintiff States?

A. Not to my knowledge.

Q. Do you have reason to believe that somebody provided additional information to the government on your behalf after the Complaint, Exhibit 2, was filed?

A. No.

Q. Did you -- do you know when you provided the 10 or 12 documents to the government?

A. I believe it was submitted in June of 2015.

Q. And why do you believe it was submitted in June of 2015?

A. I -- that's when I recall Susan telling me she was submitting it.

Q. Okay.

MS. BURKE: I would just caution the witness not to reveal attorney-client communications.

BY MS. MAYER:

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Q. Is that June of 2015 or June of 2016? Like last year?

A. 2015.

Q. Okay. Other than the 10 or 12 documents that we've discussed, have you shared any additional information about this case with the government?

A. I was interviewed one day.

Q. Do you know when that interview occurred?

A. I don't recall. I think it was the spring.

Q. Of which year?

A. 2016.

Q. How long was the interview?

A. Part a day. I don't recall how many hours.

Q. Was it one hour?

A. My guess is half a day.

Q. Who was present at that interview?

A. I don't recall their names.

Q. Was your counsel with you, Ms. Burke?

A. Yes.

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Q. Other than the interview and the 10 or 12 documents that you provided in support -- that you provided that we've already discussed, have you had any other -- have you shared any other information with the government about this case?

A. No.

Q. What was the substance of the interview with the government? You can start with, what were the topics that you discussed with the government?

MS. BURKE: Object and instruct the witness not to answer.

MS. MAYER: What's the basis?

MS. BURKE: That the United States has not been noticed in this deposition, and I believe that the United States has the investigative and deliberative process privilege that attaches to those relator interviews.

MS. MAYER: Do you represent the United States today, Ms. Burke?

MS. BURKE: They are the real party in interest, and they are not presently

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represented because they were not -- the deposition notice was not sent to them.

I do not know what position they would take, but given their absence and given they're the real party in interest, I instruct my witness and my client not to answer that question.

MS. MAYER: Are you claiming any attorney-client privilege over that communication?

MS. BURKE: With my client?

MS. MAYER: Yes.

MS. BURKE: Yes.

MS. MAYER: You're claiming that you had an attorney-client privileged communication with your client while the United States was present?

MS. BURKE: I am claiming that the question that you asked seeks to elicit information shared during a meeting with counsel for the United States, and counsel for the United States has the right to assert a privilege to protect that meeting, and I believe we have the right,



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2 therefore, as well, to assert a privilege  
3 to protect that meeting.

4 So I'm instructing my client not to  
5 answer.

6 MS. MAYER: So I'm trying to  
7 understand what the privilege -- the  
8 nature of the precise privilege is that  
9 you're asserting. I understand you're  
10 asserting on behalf of the United States,  
11 who is not your client, a deliberative  
12 process privilege.

13 What I'd like to understand, Susan,  
14 is whether you are asserting any other  
15 privilege.

16 MS. BURKE: I'm asserting all  
17 potential privileges at this point.

18 MS. MAYER: What's your --

19 MS. BURKE: As you know, I was not  
20 aware until this morning that the United  
21 States has not been noticed for this  
22 deposition. The deposition notice, it  
23 only came to my attention that it had not  
24 been served on the United States, and so I  
25 have not had time to -- so I have not had

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2 time to research all of the potential  
3 privileges.

4 Normally, what happens is the United  
5 States is noticed, and when they don't  
6 show up, you assume they've waived all  
7 privileges.

8 We have already asserted a joint  
9 prosecution privilege, and so -- so at  
10 this point in time, I'm instructing her  
11 not to answer, and I'm asserting all  
12 potential privileges to cover that  
13 meeting.

14 MS. MAYER: So I understand your  
15 position with respect to the United  
16 States' invocation in theory of --

17 MS. BURKE: Potential. Potential  
18 invocation.

19 MS. MAYER: I understand your  
20 position with respect to the United  
21 States' potential invocation of a joint  
22 prosecution privilege, and you've also  
23 mentioned a deliberative process  
24 privilege.

25 MS. BURKE: And an investigative

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2 privilege.

3 MS. MAYER: Are you asserting an  
4 attorney-client privilege over the  
5 communication?

6 MS. BURKE: Yes.

7 MS. MAYER: What's the basis for  
8 asserting an attorney-client privilege  
9 over that interview?

10 MS. BURKE: The joint prosecution  
11 privilege makes the communication a  
12 privileged communication.

13 MS. MAYER: Your position is that if  
14 you have a joint prosecution agreement  
15 with the United States, that creates an  
16 attorney-client privilege over that  
17 interview?

18 MS. BURKE: Well, at this point, I'm  
19 not sure what I would assert vis-a-vis --  
20 if the United States had waived its  
21 privileges had it been noticed and not  
22 appeared and those privileges would have  
23 been -- and they waived their privileges,  
24 I'm not sure that I independently would  
25 have asserted a privilege.

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2 The complexity arises because of the  
3 lack of notice to the United States that  
4 then puts me in a position that I don't  
5 know what the United States will do and/or  
6 what it has done.

7 So at this point in time, all I can  
8 say is that if they waive the privileges,  
9 I would waive the privileges.

10 MS. MAYER: But I guess I'm trying  
11 to understand, do you believe that,  
12 independent of the joint -- the potential  
13 joint prosecution privilege, that you have  
14 an attorney-client privilege in that  
15 interview?

16 MS. BURKE: It turns -- the  
17 privilege -- any privilege that attaches  
18 turns on the United States' -- and the  
19 United States' invocation of the  
20 privilege. If they don't invoke a  
21 privilege, then we won't invoke a  
22 privilege.

23 MS. MAYER: So we served this  
24 request for production for all  
25 communications with the government in

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September. And you --

MS. BURKE: You're now referring back to Exhibit 1?

MS. MAYER: I'm referring back to Exhibit 1, and you responded that you object because it calls for attorney-client communications, work product, joint prosecution, common interest and other applicable privileges; and you did not produce any communications with the government; correct?

MS. BURKE: No, that's not correct. We produced documents that had been provided to the -- to the government.

MS. MAYER: Did you withhold any communications to the government, Susan?

MS. BURKE: The material disclosure and another follow-up submission.

MS. MAYER: And your basis for withholding those was the government's joint prosecution privilege?

MS. BURKE: As you see here, these are the -- with respect to the production of documents, those are all of the

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privileges that we invoked.

MS. MAYER: Well, but I'm asking you today whether the joint prosecution and common interest privilege was the reason why you didn't produce those.

MS. BURKE: All the reasons that we have here are the reasons that we didn't produce.

MS. MAYER: So your position is that the material --

MS. BURKE: Attorney-client, work product, joint prosecution, common interest privilege and any other applicable privilege, doctrine, immunity, statute, regulation, rule or restriction.

MS. MAYER: And do you believe that anything other than the joint prosecution and common interest privilege protects those communications?

MS. BURKE: I do.

MS. MAYER: Which privileges, independent of those, protect the communications?

MS. BURKE: With all due respect, I

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have not prepared on this issue, and so there's a lot of case law that speaks to what has to be turned over and what doesn't have to be turned over.

I did not review that in preparation. This is not an oral argument. This is not something where I came ready to brief our legal position.

I'm happy to brief our legal position. If you want to move to compel, we can brief the legal position. I'm not prepared today. I don't have the case law at the ready, and I didn't come prepared to do this.

This is a deposition of a witness. We're making the witness available. If you have any questions to her, I suggest you use your time to question the witness, and we can brief these issues later.

MS. MAYER: Did you check -- after receiving this request for production of documents, Susan, did you reach out to attorneys for the United States and the states to check whether they were invoking

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a common interest or joint prosecution privilege to protect those disclosures?

MS. BURKE: Ms. Mayer, I'm not the witness. I'm not the witness. I don't have to answer your questions on record.

You're here -- if you want to ask Ms. Forney any questions, let's proceed. Otherwise, let's take a brief break if you don't have any more questions for the witness -- actually, I would like a bio break at this point.

MS. MAYER: Yes, we can take a break.

THE VIDEOGRAPHER: We are going off the record at 3:07.

(Recess taken from 3:07 p.m. to 4:01 p.m.)

(Whereupon, a discussion was held between counsel, off the video record, and outside the presence of the witness.)

MS. MAYER: We have discussed the matter of the privilege over Ms. Forney's oral communications with the government in this case, and the agreement we've reached

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is that Ms. Burke is going to stand on the privileges she's already asserted over those communications today.

We will continue the deposition today on other topics. Ms. Burke has agreed that if the deposition is allowed to close today, she will and her client will do two things: First, they will allow her client to be deposed again on those oral communications with the government; and to the extent there are written communications that are produced to the government that defendant wants to depose her client on, deposition on those as well.

That -- it is anticipated that Ms. Burke will be able to present her client for that limited deposition if it's going to happen, either in New York on November 30th or December 1st or in Philadelphia on December 5, which are dates when depositions of other witnesses in this case are already scheduled, so that the attorneys for all the parties

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will already be present, and that will be more cost-effective than trying to schedule a separate date.

Finally, the other agreement that Ms. Burke has made on behalf of her and her client is that, notwithstanding the fact that the deposition today will close, she and her client will not discuss her client's communications with the government at all in advance of any subsequent deposition on that topic.

MS. BURKE: Agreed. And I will go get the witness, and we'll be back at it.

(Forney Exhibit 3, Cardiology Associates of West Reading Medtronic documents, Bates REL-00471 to 512, was marked for identification.)

THE VIDEOGRAPHER: We are back on record at 4:05.

BY MS. MAYER:

Q. Ms. Forney, I'm showing you what's been marked as Exhibit 3 to this deposition. Do you recognize this document?

A. Yes.

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Q. Is this a document that you've produced in this case?

A. It looks like something I would produce, yes.

Q. Okay. Ask you to turn to -- first of all, what is it?

A. So this would be, I guess what it states, "Patient Guidelines for Remote Monitoring" in the Reading Clinic, and it's a patient guideline.

Q. Okay. Is that a document that you created, or did someone else create it?

A. I believe I created it, in partnering with physicians at Cardiology Associates of West Reading.

Q. And I'd ask you to turn to, if you flip through it, the 11th page of this document. It's the document Bates-numbered REL-00481.

A. Yes.

Q. Do you see at the top that says, "St. Luke's OptiVol and Cardiac Compass Worksheet"?

A. Yes.

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Q. Is this the same document as the Cardiology Associates of West Reading guidelines that we were just talking about, or is this a different document that's just now attached?

A. Can you ask that question again, please.

Q. Sure. REL-00481, this OptiVol and Cardiac Compass worksheet that appears to have St. Luke's at the top --

A. Uh-huh.

Q. -- is this page, 00481, part of the Cardiology Associates of West Reading patient guidelines, or does this look like maybe a different document that somehow got attached to the Cardiology Associates of West Reading patient guidelines?

A. I want to say that this looks like it's in draft form and might have been something that I created for St. Luke's. I see in the footprint, I put "Cardiology of West Reading," so, you know, I might have shown it to them and they might have decided that they thought it was a document that they would, you

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know, like to adopt in their clinic, that something similar might be good.

Q. So we talked earlier about some worksheets that you developed --

A. Uh-huh.

Q. -- for workflow. Do you remember that?

A. Yes.

Q. Is this St. Luke's OptiVol and Cardiac Compass worksheet an example of that kind of a worksheet?

A. Yes.

Q. If you turn the page to REL-00482, is this part of the St. Luke's worksheet, or is this a separate thing?

A. It just has CAWR on it, which is West Reading. So I would tend to think that that might be separate.

Q. Where do you see CAWR on this?

A. It's in the verbiage: "Device patient to call CAWR for guidance."

Q. Is this document, 00482 to REL-00483, another example of the kind of workflow worksheet you were talking about

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earlier?

A. Yes.

Q. Could you take a look at REL-00484?

A. Yes.

Q. What is this page?

A. This has "ICD Interrogation" at the top. This would be a worksheet for that type of a device check.

Q. And do you -- there's some handwriting on it. Do you see that?

A. Yeah, that's my writing.

Q. Why is this document, this ICD interrogation checklist, in this series of pages?

A. This is -- all of these are in reference to device follow-up. So they all have a common theme that way.

Q. Do you remember putting this packet of pages together at some point?

A. I remember working on it, and this page would have been a draft that, in meeting with physicians, they would have made some additional suggestions to.

MS. BURKE: And let the record

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reflect the witness was referring to REL-00484.

BY MS. MAYER:

Q. Looking at REL-00485 through 491, what are these pages?

A. These are pages that likely one of the sales reps put together with maybe data out of Paceart on the clinic at Reading. It tells you how many different devices that they have. It talks about the types of follow-up and how the follow-ups have increased over time, so their service -- their service burden.

Q. Let's start with REL-00485. This document says, "CAWR Active Patients," has numbers for Pacers, ICDs and Total. What -- do you know what that means and what it's referring to?

A. I believe this refers to the number of patients that the device clinic sees.

Q. Is this the data that you believe was pulled from Paceart?

A. Yes.

Q. And what's Paceart?

A. Paceart is a database that Medtronic

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owns but clinics use to enter data from their device checks -- implants and device checks.

Q. And do they only enter data for Medtronic products into Paceart?

A. The clinic would enter data from every manufacturer into Paceart.

Q. Why would the sales rep have pulled this information, if you know?

A. To partner -- part of what we were encouraged to do is to partner very -- at a very high level with physicians and to know as much about their clinics and so that we could help the solutions -- help provide solutions for their clinics.

So without pulling data, one doesn't really know the work that they're doing.

Q. Turning to the next page, REL-00486, CAWR device clinic trends, is this information that you requested from the sales rep?

A. No, this is information that they would have pulled as part of the same initiative that informs the physicians about their clinic. I did not have access to Paceart at West Reading, but the sales reps did.

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Q. So these pages -- patients with no CL -- the pages we're talking about here, REL-00485, 486, 487, 488 through 491, are not pages that you used with West Reading, the West Reading clinic; correct?

A. I did not personally use them in conversations with physicians, no.

Q. Turning to REL-00492 to 493, do you know what this document is?

A. So this is a document I would have supported St. Luke's with. Once again, they're device clinic guidelines for remote device monitoring.

Q. And then starting on page 00494 through 00503, are these again clinic -- it starts with a page called "Clinic Analysis." Is this something that you would have been involved in, or is this the sales rep?

A. This would have been the sales rep pulling it and presenting to the clinic, and some of the worksheets that I created might have been part of the solutions. You can see on page 00495 the center had clinics at multiple locations.

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Q. And what does that tell you, that they had clinics at multiple locations?

A. West Reading would have been one location that they did all their work in. I think when you have multiple locations and have device checks spread out, that just means more work to get the job done. And some of those would have been satellite offices to their main office.

Q. We talked about these pages, 00494 through 00503, those are not your work; that's sales rep work; correct?

A. Can you please repeat the numbers.

Q. Sure. 00494 through 00503.

A. Correct.

Q. Okay.

A. The considerations component of this slide set, I might have been involved with some of the conversations on suggestions to improve. But at the end of the day, I didn't create the slide set.

Q. Okay. And in looking at 00502, which is the slide that you just mentioned stating considerations, has a bullet

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"Efficiency." Under "In-office time saturation," there are a few bullets, one of which is what we already discussed, which is increase remote usage; right?

A. Uh-huh.

Q. It also lists shortening the device check window; right? And then another -- is that another way to reduce in-office time?

A. I'm not familiar with that verbiage.

Q. Okay. Are you familiar with the first bullet, "Eliminate threshold testing for auto devices"?

A. Yes.

Q. That's another way to reduce in-office time?

A. Yes. So I talked about that this morning a little bit, that if a device is older and you have to do a manual check, that takes longer time, and when new devices came on the market and did an auto check, the practice of habit was -- I've done manual threshold testing for a long time, and so they continue to do it to trust the auto check.

The recommendation here is to

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eliminate the auto device check -- or the manual check.

Q. And those manual checks would be done by whoever was doing the device check?

A. Correct.

Q. So this would reduce the number of device checks or the time spent on device checks? Or both?

A. Time spent on device checks.

Q. Okay. Turning to 00504 and to 505, is this another example of a workflow worksheet?

A. Yes, this is another hospital.

Q. Are Lehigh Valley and St. Luke's and Cardiology Associates of West Reading all affiliated, or are these just different examples from different places?

A. Separate, competitive practices.

Q. Can you turn to REL-00506 through 00508. Do you know what those three pages are?

A. This is a job aid --

Q. Is this another workflow worksheet?

A. -- that I created to help our staff.

Q. So this is a workflow worksheet for



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use by --

A. Medtronic employees.

Q. -- Medtronic staff? Okay.

A. So that we are consistent and seamless when we are serving various hospitals.

Q. Okay. And what activity is described in these sheets?

A. When we support -- this specifically is for hospital implant data into Paceart and CareLink and hospital device follow-up checks into Paceart, that whoever was covering the case, as I discussed earlier, were interchangeable, that we would be consistent in our approach.

Q. And turning to 00509, is it part of 00510 and 00511, or is it different?

A. 0059 would have been a Medtronic initiative and their strategic framework for us.

Q. Is this just a standalone one-page document as far as you can tell, or are the two pages that come after it somehow associated with it, if you know?

A. I want to say that this would be

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Medtronic support in growing the cardiac ablation side of the clinic.

Q. Okay. If you look at -- do you know whether these few pages -- 00509, 00510 and 00511 -- go together or whether they're separate?

A. They look to me like they go together.

Q. Okay. But you don't know; right?

A. Right.

Q. If you turn to 000510, if you look at the footer, do you see that a copyright 2015 Medtronic, Inc.

Do you see that?

A. Zero zero --

Q. 00510 is the document. It's the AF PRO patient referral optimization. If you go to the left side of the page, sort of the bottom chunk of text, you can see a little copyright 2015 Medtronic, Inc. on it.

Do you see that?

A. Uh-huh.

Q. How did you get a copy of a 2015 Medtronic document, if you recall?

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A. I don't recall how I got this specific one.

Q. Have you received Medtronic documents since you left Medtronic?

A. Not as a rule of thumb.

Q. But you have received some?

A. I don't recall if this was laying around and I picked it up, or if this was part of two other studies that I recall while I was in the room that we do. One is AF -- I already shared with you -- is stock AF, which is AF ablations, that this might have been something that came with the clinical study. I don't recall.

Q. So have you, to your knowledge, received Medtronic documents from another person while -- since you left Medtronic?

MS. BURKE: And I would simply caution the witness not to reveal the attorney-client communications. But you may answer excluding that category.

THE WITNESS: No.

BY MS. MAYER:

Q. I'm sorry. Are there documents that

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you received from persons -- Medtronic documents that you received from people since you left Medtronic that you -- I'm sorry. Let me take that back. Strike that.

MS. MAYER: What's the basis for claiming privilege over her response to my question?

MS. BURKE: If -- because there may be documents that I sent her.

BY MS. MAYER:

Q. Are there documents in your production to us that you received -- that are Medtronic documents that you received from your client that you did not possess until your -- I'm sorry. Strike that.

Are there documents in the production you made to Medtronic that you received from your counsel and that you did not possess until your counsel gave them to you?

MS. BURKE: Object; instruct her not to answer.

MS. MAYER: What's the basis?

MS. BURKE: Attorney-client communication and attorney work product.

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2 MS. MAYER: I think I'm first asking  
3 whether she received any, which I don't  
4 think reveals the content of an  
5 attorney-client communication or reveals  
6 work product.

7 MS. BURKE: I think it reveals both.

8 MS. MAYER: I think it would just  
9 reveal whether she received documents --

10 MS. BURKE: From her counsel.

11 MS. MAYER: -- from her counsel; but  
12 not what the documents were or what the  
13 content of the documents were at this  
14 point.

15 MS. BURKE: But it's -- but it --  
16 revealing whether or not she received them  
17 is work product, and then it also reveals  
18 an attorney-client communication.

19 But let me simply put on the record  
20 that there are Medtronic documents that  
21 are available in the public domain.

22 BY MS. MAYER:

23 Q. Ms. Forney, you mentioned that this  
24 document, REL-00510, might be something that  
25 you picked up that was laying around. What did

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2 you mean by that?

3 A. Possibly in the current business  
4 that I'm in, in doing clinical trials, there  
5 might have been some documents with all the  
6 study materials.

7 Q. And so this might be something that  
8 Medtronic had provided to your current employer  
9 in connection with the clinical trials that  
10 you're coordinating for Lancaster?

11 A. Could have been a conversation with  
12 a physician. I don't know.

13 Q. So you don't have any idea how you  
14 came to have this document?

15 A. No.

16 Q. And looking at 00511 at the very top  
17 you'll see a date, 9/11/2014.

18 Do you see that?

19 A. I do.

20 Q. And same answer: You don't have any  
21 idea how you got a copy of that page as well?

22 MS. BURKE: Object to form.

23 BY MS. MAYER:

24 Q. Do you know how that page came to be  
25 in your possession?

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2 A. No.

3 Q. Is it fair to say that -- I think  
4 when we first started talking about REL-00471,  
5 you said this is a document with patient  
6 guidelines for remote monitoring, and there's a  
7 bunch of materials attached that related to  
8 Cardiology Associates of West Reading; correct;  
9 correct?

10 A. Correct.

11 Q. Is it fair to say that, at least  
12 document 00509 through 512 are not related to  
13 your work for Cardiology Associates of West  
14 Reading?

15 A. Correct.

16 Q. Do you know how they came to be  
17 attached to this document?

18 A. No.

19 I'd like to add, when I estimated  
20 number of documents submitted to the  
21 government, all of this could have been  
22 submitted as one or they could have been  
23 submitted as five. I don't know specifically  
24 if that could affect the number of documents  
25 that -- that I estimated.

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2 Q. Did you submit the document or  
3 documents that are reflected by REL-00471  
4 through 00512 to the government?

5 A. Yes.

6 Q. Do you recall submitting 9 or 10  
7 additional documents to this or only a few more  
8 in addition to this?

9 MS. BURKE: Object to form.

10 THE WITNESS: I recall submitting  
11 Medtronic compliance documents, probably  
12 HRS documents, AvroMed documents, samples  
13 of high-level partnering with customers to  
14 ensure efficient clinic and implant  
15 workflows, which -- this is three  
16 different centers, but it's sort of like  
17 one document.

18 I recall submitting samples of HIPAA  
19 violations. I recall submitting training  
20 materials. I recall submitting a handful  
21 of marketing materials.

22 I don't know -- I do not recall what  
23 was scanned together in a group and sent  
24 versus independent scanned copy.

25 But these follow-up papers were

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certainly expectations on a DSM to partner at a high level with physicians and clinic staff to make their job easier, and to encourage utilization of our devices.

In answer to a question you asked earlier today regarding number of clinical trials performed at Lancaster General Health, as a district service -- or as a research operations -- I thought of two additional studies that are ongoing with Medtronic: AdaptResponse and also Stroke AF. I think that makes up the complete list.

BY MS. MAYER:

Q. Thank you.

MS. MAYER: Can you mark the next exhibit as 4.

(Forney Exhibit 4, Presentation, "Geisinger, Medtronic Healthcare Systems Strategic Partnership Discussion," 12-1-09, Bates numbers obscured, was marked for identification.)

BY MS. MAYER:

Q. I'm showing you what's been marked

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as Exhibit 4, Ms. Forney, REL-0239, the only Bates No. on this document -- sorry -- because the Bates numbers have been cut off.

It looks like it goes REL-0239 is the starting Bates number, goes through REL-0240. They've been slightly cut off. I will say it is a SlideDeck with Medtronic, and it says, "Geisinger/Medtronic Healthcare Systems Strategic Partnership Discussion," December 1, 2009.

Do you see that?

A. I do.

Q. Do you recognize this document?

A. Yes.

Q. What is it?

A. This would have been a presentation that our field organization, district manager and sales reps would have made to the center.

Q. You said "would have made." Did you make this presentation to Geisinger?

A. No.

Q. How did you come to have this document?

A. Items are shared across the

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district. I'm a manager.

Q. So it just came to you in your role as -- it just was provided to you?

A. Yes.

Q. But you didn't create this document?

A. No.

Q. And you didn't give this presentation?

A. No.

Q. Do you know who did?

A. No. This is a sales document.

Q. Is this a document that you provided to the United States and the states? Do you know?

A. I don't recall.

This also is reflective of very high level of partnering with customers across multiple divisions to demonstrate how we can meet their needs in ways that other companies cannot.

MS. MAYER: Motion to strike everything after "I don't recall" as nonresponsive.

MS. BURKE: Objection. It's

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inappropriate to move to strike in depositions.

(Forney Exhibit 5, Email communication ending 1-13-10; MDTEDPA-47212 to 4730, was marked for identification.)

BY MS. MAYER:

Q. I'm showing you, Ms. Forney, what's been marked as Exhibit 5. It's a document MDTEDPA00004721 is the beginning; and the last page is 004730.

Do you recognize this?

A. What is the last page?

Q. 00004730.

A. I recognize this.

Q. What is it?

A. This would have been an updated Medtronic technical support policy and a clarifying question between myself and Brian, the district manager.

Q. And that -- the first email on 00004721, this is an email from Thursday, January 7th, 2010, from you to Brian Dye. Is that correct?

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A. Correct.

Q. And in it you say, "I had a question today regarding if a physician on numerous occasions is not present for a clinic. What do you constitute frequent?"

Do you see that?

A. Yes.

Q. Is that a question that had come up before? That you --

A. With -- this is a question that came up in light of the new guidelines, which came out the 24th of October, 2008.

Q. And his response is at the top; correct?

A. Correct.

January 13th, 2010, Brian Dye to Cathleen Forney. And he says [reading]: My hope is that the CS notified the reps and they discussed a plan to move forward. My guidance to the team has always been to make me aware of the situation and continue with business as usual until we work out a new plan with the doc. Field personnel should seek guidance from their local management or CRDM compliance and

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ethics officer in those situations.

Do you see that?

A. Yes, yes.

MS. BURKE: Objection. It's -- you're leaving out sentences. You're purporting to read the document. You haven't read it all.

MS. MAYER: Susan, can you avoid speaking objections, please? I think I have been fairly lenient today.

MS. BURKE: Well, object, and I would ask that you read in the missing parts into the record.

BY MS. MAYER:

Q. I think the document speaks for itself. I'm asking you and pointing, do you see those things; correct? Do you see where those --

A. Yes.

Q. -- sentences that I read were written?

And it says at the bottom, "Let's discuss"?

A. Yes.

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Q. Did you have a discussion with Brian in response to his email?

A. Yes.

Q. What was the substance of that discussion?

A. As I recall the discussion, the rule of thumb was just to continue as business as usual. Our district covered many remote clinics where physicians were often not present, and the desire was to not get a physician upset and for us to continue to deliver our business as needed when asked.

Q. And so did you respond to the person who asked the question to you, that's reflected in that Thursday, January 7 email at the bottom of 00004721?

A. I responded to that person that Brian and the sales reps and they would work out a plan.

Q. And did that person come to you with any follow-up after that?

A. I don't recall.

Q. Who was the person who raised the question?

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A. I don't recall.

Q. Are you aware of any -- I'm sorry. Step back.

Do you know whether the sales reps worked out a plan with the person who raised the question in this instance?

MS. BURKE: Can you read that question back to me, please.

(Record read.)

THE WITNESS: My understanding, the plan was for the clinical specialists to continue to execute and conduct the clinics as they had been doing, whether a physician was present or not.

BY MS. MAYER:

Q. Is that the direction that you gave to the clinical specialists?

A. That would have been the direction that the sales rep and the district manager gave and I was put in a position of supporting.

Q. So did you give that advice?

A. No.

Q. So the CS was not told that they needed to continue providing the device checks

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 2 under those circumstances; correct?  
 3 MS. BURKE: Object to form.  
 4 THE WITNESS: Please state that  
 5 question again.  
 6 BY MS. MAYER:  
 7 Q. So the CS was not told that they  
 8 needed to continue providing the device checks  
 9 under those circumstances; correct?  
 10 MS. BURKE: Object to form.  
 11 THE WITNESS: No, my response is the  
 12 sales rep and the district manager would  
 13 have guided the individual to continue  
 14 conducting clinics with the physician, as  
 15 business as usual.  
 16 BY MS. MAYER:  
 17 Q. And were you present for that  
 18 conversation between the sales rep and the  
 19 district manager and the person who raised this  
 20 question?  
 21 A. No.  
 22 Q. Turning to the attachment to that  
 23 email at 00004723, is this a copy of the  
 24 Medtronic CRDM field technical support policy  
 25 as of October 7th, 2008?

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 2 expectation to complete what it is that we  
 3 performed," why do you say that there was an  
 4 expectation to do that?  
 5 A. So if anyone from Medtronic is  
 6 performing a clinic, one of the last things on  
 7 a worksheet is -- describes what it is that you  
 8 did: Did you do a device check with  
 9 programming, a device check without  
 10 programming? What type of device was it?  
 11 And often we would just put a  
 12 checkmark on what it was that we did next to  
 13 the code.  
 14 Q. And so that's what you did. But  
 15 what was the source -- why did you believe that  
 16 it was expected that you do that? Were you  
 17 told to do that? Or was your expectation  
 18 derived from something else?  
 19 A. Practice of habit over many years.  
 20 We had always done it.  
 21 Q. So nobody told you to do that; it  
 22 was just something you did?  
 23 A. It was part of the follow-up clinic  
 24 process, and we did it.  
 25 I don't recall any clinics that did

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 2 A. Yes.  
 3 Q. Are you familiar with this policy?  
 4 A. I'm familiar with this policy, yes.  
 5 Q. And did you follow this policy?  
 6 A. My intent was to follow the policy.  
 7 Q. Are you aware of -- well, strike  
 8 that.  
 9 Did you follow the policy?  
 10 A. No. 2, reimbursement, field  
 11 personnel should; most clinics that were  
 12 supported by a clinical specialist, Medtronic  
 13 or others, did have either a super bill or  
 14 clinical paperwork that contained reimbursement  
 15 information, and it was our expectation to  
 16 complete what it is that we performed.  
 17 Q. So when you say "it was our  
 18 expectation," is that -- are you saying that  
 19 policy Section 2, reimbursement field personnel  
 20 should not fill out super bills or any other  
 21 clinic paperwork that contains reimbursement  
 22 information, that you fulfilled that  
 23 expectation?  
 24 A. No.  
 25 Q. So when you say that "there was an

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 2 not ask us to do that.  
 3 Q. Did anyone at Medtronic tell you you  
 4 needed to do that?  
 5 A. I don't recall.  
 6 Q. Did you tell anyone at Medtronic  
 7 that they needed to do that?  
 8 A. Not to my knowledge.  
 9 Q. How do you know that it was done?  
 10 A. These clinics are being performed  
 11 before I entered into the district, and the  
 12 clinics are being performed after I left the  
 13 district. I saw what came before me.  
 14 Q. Saw people's conduct or -- saw what?  
 15 A. I saw worksheets completed.  
 16 Q. And how do you know that Medtronic  
 17 completed that worksheet?  
 18 A. I recognized the name signed on the  
 19 worksheet as a district employee.  
 20 Q. And you filled out -- did you fill  
 21 out and sign worksheets with those check boxes  
 22 on them, checkmarks?  
 23 A. I completed whatever document the  
 24 clinic asked me to complete.  
 25 I'm not saying it was right. I'm



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2 saying our primary goal was always to make the  
3 customer happy, and this was what was expected  
4 of us and I did it.

5 Q. But nobody at Medtronic directed you  
6 to do that; correct?

7 A. I don't recall.

8 Q. You don't recall anybody at  
9 Medtronic ever directing you to do that;  
10 correct?

11 A. I don't recall a conversation with  
12 an in-house corporate person telling me to do  
13 or not to do. I think it's highly likely there  
14 were field conversations about providing  
15 quality follow-up and the expectations of what  
16 we're doing in a clinic.

17 Q. But you don't recall anybody in  
18 corporate or from the field telling you to  
19 complete whatever the clinic asked you to  
20 complete on the worksheet; correct?

21 A. Only corporate, I stated.

22 Q. So who -- do you recall someone in  
23 the field telling you to fill out whatever  
24 paperwork the clinic asked you to complete?

25 A. Those are conversations that had

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2 high probability of happening. I don't recall  
3 a specific incidence many years later. But I  
4 would have been coached when I entered the  
5 district what the culture of that district was  
6 and how clinics were performed and my  
7 expectation to be consistent and seamless as a  
8 Medtronic employee in continuing to conduct  
9 those clinics. And that would have been  
10 completing the worksheets that were provided by  
11 the clinic to me.

12 Q. And you say there was a high  
13 probability that such a conversation existed,  
14 but you don't recall a conversation?

15 A. I don't recall the specific day, the  
16 specific time; but in onboarding somebody new  
17 to a district, those kind of conversations  
18 always happen.

19 Q. Well, did you participate in those  
20 conversations involving other people's  
21 onboarding?

22 A. Yes.

23 Q. And did you tell those folks in  
24 those onboarding discussions that they needed  
25 to fill out whatever paperwork the doctor and

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2 clinic asked them to fill out?

3 A. That's more of a sales rep,  
4 management of his territory, and those  
5 conversations would have come more from the  
6 sales rep organization within a district. I  
7 don't personally recall telling somebody. I  
8 might have; I don't recall.

9 Q. But you do recall being a part of  
10 those conversations?

11 A. I do recall that those types of  
12 conversations unfold whenever somebody enters  
13 into the district.

14 Q. Well, pick one of them that you  
15 recall. Who was at it?

16 A. I would state that Chuck Mertz, the  
17 sales rep, in reviewing his clinics and how  
18 follow-ups are done at his many clinics, that  
19 this is how we do it at this clinic. This is  
20 how we do it at this clinic.

21 And I would have just followed suit  
22 and been consistent with what came before me.

23 Q. So do you specifically remember  
24 Chuck Mertz telling you that?

25 A. I don't remember the day or time we

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2 would have had a conversation, but that would  
3 have been something I would have been guided  
4 towards. And as I shared prior, it's a  
5 practice that went on as long as I can remember  
6 working for Medtronic. So it doesn't matter  
7 which district I'm in; this document here  
8 refers to the time that I'm in Eastern  
9 Pennsylvania. Chuck had many clinics.

10 Q. Was Chuck a sales rep in Eastern  
11 Pennsylvania?

12 A. Yes. And Tom Lynn was a sales rep  
13 at West Reading, and he would have told me how  
14 they do things there.

15 Q. Did he tell you, or when you say "he  
16 would have," you're speculating that he told  
17 you?

18 A. He told me how things were done  
19 there.

20 Q. Okay. And in terms of telling you  
21 how things were done at West Reading, did he  
22 tell you you had to complete whatever paperwork  
23 the clinic asked you to complete?

24 A. If there was a remote clinic that  
25 had it, I would have done it, yes.

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Q. Because Tom told you to do it or because it was your practice and habit to do it of your own initiative?

A. Because it was the practice and habit of all that had worked with Medtronic for a long time.

Q. So are there other pieces to the CRDM field technical support policy that you didn't follow, or did you follow the policy?

MS. BURKE: Object to form and foundation.

MS. MAYER: Okay. Well, then strike the question.

BY MS. MAYER:

Q. We talked about the second bullet point under No. 2 on 00004723, the CRDM field technical support policy already.

Putting that one aside, did you follow the rest of the technical support policy in your time at Medtronic that this policy was in effect?

A. Yes, I -- I tried to follow this, although on No. 3, first bullet point, I would say that the Google Calendaring violated that.

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Q. Other than what we just discussed about the second bullet point under No. 2 and what we just discussed about the first bullet under No. 3, patient data, though, you followed the rest of the technical support policy; correct?

A. Yes.

Q. Are there any limits in the technical support policy on the number of device checks that you can provide to a customer?

A. No.

Q. I think earlier -- again, I just want to make sure I understand how it worked.

If a doctor determined that a patient should be implanted with a Medtronic device, would someone from that practice or that hospital call Medtronic to schedule the implantation?

A. Yes.

Q. And request that Medtronic come to the implantation?

A. Yes.

Q. And if a Medtronic device was being

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implanted, Medtronic would provide someone to be at the implantation; correct?

A. Yes.

Q. And then after the implantation, the Medtronic devices required follow-up checks?

A. Yes.

Q. And did the frequency and type of follow-up vary device to device over the years, or was it the same?

A. So the next service of item that we offered at no cost to physicians was a check before the patient would go home from the hospital.

Q. And so would the physician request that Medtronic be present at that check?

A. Yes.

Q. The predischarge check? And then if the physician requested that Medtronic be present at that predischarge check, would Medtronic provide a field person to do that?

A. It was the expectation that we did those on all of our implants. And the expectation derived because it's a service we offered, and then once they became used to it,

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then we had to do it on everybody. And it was a competitive advantage initially over competitors that did not offer it.

Q. And after the patient was discharged from the hospital, there were follow-up appointments to check the device; correct?

A. Correct.

Q. And did the number of follow-ups and frequency of follow-ups depend on the device over the years, or were they the same regardless of the device?

A. The number of follow-ups that a patient would undergo is set by Medicare guidelines.

Q. Does it vary device to device, and has it varied over time, or is it all the same?

A. It's not all the same. It increases in frequency as the device gets older.

Q. And if the physician practice or hospital had a patient who needed a device check, they would call Medtronic?

A. Yes.

Q. If it was a Medtronic device they would call Medtronic; correct?

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A. Yes.

Q. And if they asked for -- if the physician practice asked for someone from Medtronic to be present for the follow-up check, Medtronic would provide someone?

A. Yes.

Q. And that was for the lifetime of the device as implanted in the patient?

A. That is a frequent saying that Medtronic would offer customers, that we're here to support the device in the patient for the lifetime of that device.

Q. And this that we've just discussed applied to -- sorry. Strike that question.

So if you had a physician practice and they only implanted one Medtronic device in one patient, they would be able to get these services; correct?

A. Correct.

Q. And if it was a physician practice that implanted a thousand implants in a year, they would get this service for each of those thousand implants; correct?

A. Yes.

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Q. And if the patient moved across the country during the time that she had a Medtronic device implanted, Medtronic would be available to do those checks in her new geography?

A. Yes.

Q. Where she's getting the checks from a different physician practice?

A. Yes.

Q. This is what you got when you implanted a Medtronic device, correct, for the lifetime of the device?

MS. BURKE: Object to form.

BY MS. MAYER:

Q. Is this what you got when you implanted a Medtronic device for the lifetime of the device?

MS. BURKE: Object to form.

THE WITNESS: Yes. Not all clinics required that level of service; some clinics did.

BY MS. MAYER:

Q. But if a clinic asked for Medtronic to be present for a check on a Medtronic

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device, Medtronic would provide it; correct?

A. Yes.

Q. Although some clinics and for some circumstances may have chosen not to ask; correct?

A. Correct.

MS. BURKE: Are we at a good break point?

MS. MAYER: How long have we been going?

THE VIDEOGRAPHER: We've been going for a little over an hour, hour and 2 minutes.

MS. MAYER: Yes, we can take a short break, sure.

THE VIDEOGRAPHER: We are going off the record at 5:06.

(Recess taken from 5:06 p.m. to 5:23 p.m.)

(Forney Exhibit 6, Email communication ending 8-1-11, Bates MDTEPA-92253, was marked for identification.)

THE VIDEOGRAPHER: We are back on

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record at 5:23.

BY MS. MAYER:

Q. Ms. Forney, I'm showing you what we've marked as Exhibit 6 for this deposition. It's an email Bates-numbered MDTEPA00092253. Do you see that?

A. Yes.

Q. At the top it says -- it's an email from Andrea Riefenstahl to Cathleen Forney, August 1st, 2011.

Do you see that?

A. Yes.

Q. Do you recognize the -- this email?

A. It's one I sent. I didn't recall off the top of my head.

Q. Who is Andrea Riefenstahl?

A. Andrea Riefenstahl is the manager of the Lancaster lab.

Q. Do you know what LG Health signifies?

A. It's Lancaster General Hospital.

Q. Is that your current employer?

A. That is.

Q. And what role does she have at the

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lab?

A. She's manager of the electrophysiology lab.

Q. Underneath her response to you is your email to her, and it copies Letitia Esbenshade-Smith.

Do you see that?

A. Yes.

Q. Who is Letitia Esbenshade-Smith?

A. She runs the electrophysiology school in Lancaster.

Q. What do you mean, the electrophysiology school in Lancaster?

A. There is a school to become electrophysiology techs that's certified here in Lancaster; and Letitia is the manager of that school.

Q. So Letitia, is she a Medtronic employee? No; right?

A. No.

Q. And she's not an employee of Lancaster General either; correct?

A. She is an employee of Lancaster General.

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Q. So Lancaster General runs the EP school?

A. Yes, at this time, in 2011.

Q. It no longer runs the EP school?

A. I think they've separated out the entity to a Pennsylvania College of Health Sciences, something like that.

Q. But at the time in 2011, LGH, Lancaster General, ran the EP school?

A. Yes.

Q. So in your email to Andrea Riefenstahl, you say that "Letia referred me to you regarding the following exploring conversation."

And the paragraph that follows raises a question about whether the cost of devices would decrease if manufacturer rep support would not be required in EP lab arena.

Do you see that?

A. Yes.

Q. Why were you raising this with Andi Riefenstahl at this time, if you remember?

A. So this would have been reaching out to somebody outside of my district. We did not

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serve -- the district I was in did not serve this hospital. So I'm trying to just think back.

My guess is that we were, in our district, trying to understand better the cost of a hospital doing business if we weren't there.

Q. You said "my guess is." Are you just filling in the blanks today where you don't recall based on what you see here, or do you remember why you were reaching out to Andi at this time?

A. I don't remember specifically why I reached out to her, but it's obvious what the question is.

Q. Because it's on the face of the document?

A. Correct.

Q. Okay. The beginning of the second paragraph of your email states that "Hospital administration at large converses with us about the cost of doing business with device manufacturers."

Do you see that?

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A. Yes.

Q. What did you mean by "hospital administration at large"?

A. It's a question that comes up often, that the cost of Medtronic devices are expensive, and I assume that they're exploring what would it look like if their lab staff performed some of the performances in the implant arena.

EP lab is where the implants occur, and --

Q. You say in the -- I'm sorry. Go ahead.

A. I did not talk to hospital administration specifically, so I'm assuming that this would have been conversations with sales reps within my district and the district manager.

Q. But you weren't having conversations about cost of doing business with hospital administration; correct?

A. That was not my role as the district service manager; but I was aware that those conversations were a concern and were being

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1 CATHLEEN FORNEY  
 2 conducted.  
 3 Q. And how were you aware that those  
 4 conversations were occurring and were being  
 5 conducted?  
 6 A. Just conversations amongst sales rep  
 7 and the district manager.  
 8 Q. It says, "Given" -- the third  
 9 paragraph, "Given LGH experience with EP  
 10 school," and then that sentence continues,  
 11 you're asking, it looks like, Andi for a  
 12 ballpark figure estimate.  
 13 Do you see that?  
 14 A. Correct.  
 15 Q. Why did you think that the LGH  
 16 experience with EP school was relevant here?  
 17 A. Lancaster trains their  
 18 electrophysiology staff, I think it's like five  
 19 different levels, with the top level being that  
 20 they're functioning as a fellow and inserting  
 21 catheters; and they need minimal support by  
 22 industry -- let me rephrase that last sentence.  
 23 I would say that, given the training  
 24 to their staff and also that they would cycle  
 25 electrophysiology students through from the

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1 CATHLEEN FORNEY  
 2 school that they had a good sense of what it  
 3 costs to train an EP lab tech, not only a new  
 4 one but one that had been there for a few  
 5 years.  
 6 Q. And at the top of the email, Andi  
 7 Riefenstahl says she needs to talk to HR.  
 8 Did she get back to you, other than  
 9 with this email, on your questions?  
 10 A. I don't recall ever hearing back  
 11 from her.  
 12 Q. Did you have any more conversations  
 13 or emails with others about your -- these  
 14 questions that you raised in this August 1,  
 15 2011, email with Andrea Riefenstahl?  
 16 A. No.  
 17 Q. Do you recall why you were reaching  
 18 out on this -- on these questions at this time?  
 19 A. Given I live in Lancaster and had  
 20 relationships with individuals at this  
 21 hospital, I was probably asked by the sales  
 22 team or district manager if I would explore  
 23 what the cost of -- of what this paragraph  
 24 states.  
 25 Q. But you don't recall specifically?

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 2 A. No.  
 3 MS. MAYER: Can we grab the Second  
 4 Amended Complaint?  
 5 THE WITNESS: Can I add a lingering  
 6 thought?  
 7 BY MS. MAYER:  
 8 Q. Which question do you have a  
 9 supplemental answer to?  
 10 A. The last -- I believe it's the last  
 11 one.  
 12 Q. I said you don't -- I asked, you  
 13 don't recall specifically? And you said, no.  
 14 You do recall --  
 15 A. I do recall general conversations at  
 16 this time around the Europe implant model where  
 17 no support was afforded during the implant  
 18 arena. You heard rumors of that model coming  
 19 to the United States; and it could be that  
 20 combined with hospital administration  
 21 conversations that I was prompted to ask and  
 22 inquire.  
 23 Q. You said you heard -- you recall  
 24 general conversations around the Europe implant  
 25 model and rumors of that model coming to the

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1 CATHLEEN FORNEY  
 2 United States.  
 3 Who were these general conversations  
 4 with?  
 5 A. Probably coworkers.  
 6 Q. Probably, but you're not sure?  
 7 A. Correct.  
 8 Q. So it could have been someone other  
 9 than coworkers.  
 10 A. Could have been someone from  
 11 corporate Medtronic. I don't recall. But  
 12 there was knowledge by the US field that Europe  
 13 did not provide the same support that was  
 14 provided in the US, and there was pricing  
 15 structure differences across the continents.  
 16 Q. So do you remember the names of any  
 17 coworkers or corporate individuals that you  
 18 spoke about this with at that time?  
 19 A. No.  
 20 Q. Do you remember the dates of any of  
 21 those conversations?  
 22 A. No.  
 23 Q. Or where those conversations  
 24 occurred?  
 25 A. Could have been a regional meeting,



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where there's more individuals together. I'm just assuming it's a high probability.

I do recall the conversations -- hearing conversations. I was more of a passive participant and listening. I don't have knowledge -- specific knowledge of what's done outside of the US.

Q. And you don't know if they were regional meetings. You're just --

A. I'm making an assumption.

Q. -- making an assumption.

And it was in those same general conversations that you recall rumors of the European implant model coming to the US?

A. Something to that end.

Q. But nothing specific and you're not sure exactly what was said; right?

A. Correct.

MS. MAYER: Can you mark the Second Amended Complaint.

(Forney Exhibit 7, Second Amended Complaint, was marked for identification.)

BY MS. MAYER:

Q. I'm putting before you what has been

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marked as Exhibit 7. Do you see Exhibit 7?

A. Yes.

Q. And do you know what this document is?

A. The second amendment -- amended complaint.

Q. And you've seen this document before; correct?

A. Yes.

Q. I'd like to turn your attention to paragraph 48 on page 18. At the beginning of paragraph 48 that says, "To date Medtronic continues to provide kickbacks in the form of free surgical support" -- and we've talked about that today; right?

A. Yes.

Q. -- "and post-implant device interrogation and analysis" -- and we talked about that; right?

A. Yes.

Q. -- "consulting services, reimbursement services and various other services of value to healthcare providers such as data entry and practice management

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worksheets and the like."

Did I read that correctly?

A. Yes.

Q. Is there anything -- I believe we've talked about a number of things today. Is there anything that you're referring to here that we haven't talked about today?

MS. BURKE: Object to form.

THE WITNESS: Medtronic was -- encouraged the field to be experts in partnering at high levels in many ways or have resources we could call on to support their learning so that -- it's almost like we were seamless like one of their staff, and it would be very, very painful for them to change the contract and not partner with us.

And I would say in addition to these items that are listed, you know, we went through extensive training on ask and exploring questions to better understand customers' explicit needs.

BY MS. MAYER:

Q. Anything else?

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A. And we would also try to provide solutions to what those explicit needs, once they became known.

Q. What customer needs that we haven't already discussed today -- excuse me. Strike that.

What solutions are you aware that Medtronic provided to address specific customer needs that we haven't addressed today?

MS. BURKE: Object to form.

THE WITNESS: Sue Heilman was a reimbursement specialist that would come to districts and talk to customers about specific reimbursement strategies.

BY MS. MAYER:

Q. Is there anything else? The -- any other solution that you're aware of that Medtronic provided to address specific customer needs that we haven't addressed today?

A. We had a truck that physician and staff, hospital or implant staff or office staff could visit and experience virtual implants, conduct virtual implants on a variety of anatomy, that no other competitor was able

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to offer. If --

Q. Are there any other solutions that Medtronic provided to address specific customer needs that we haven't addressed?

MS. BURKE: Counsel, I'd just ask that you refrain from interrupting the witness.

THE WITNESS: If they lost an employee, we would stand in the gap while a new employee was hired and trained.

BY MS. MAYER:

Q. Who did you do that for? What specific doctors or practices did you stand in the gap for?

A. I don't recall every clinic that we provided that service for in Eastern Pennsylvania. I do recall we did that for St. Luke's.

Q. When?

A. When they had change in staff.

Q. And so if they lost an employee, you would stand in and do the device checks that the staff person was doing?

A. Correct.

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Medtronic field employee could do device checks if St. Luke's or another clinic was short-staffed; that you provided a lot of education to heart failure clinics on interpreting heart failure diagnostics; and you encouraged the integration of device diagnostics into heart failure clinic workflow.

Does that wrap up the various other services of value that -- or solutions that Medtronic provided to respond to specifically identified customer needs --

MS. BURKE: Object.

BY MS. MAYER:

Q. -- that you recall?

MS. BURKE: Object to form.

THE WITNESS: No.

BY MS. MAYER:

Q. What other solutions that were designed to respond to specifically identify customer needs --

A. Medtronic --

Q. -- did you do?

A. My apologies.

Medtronic provided courses for

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I provided a lot of education to heart failure clinics on interpreting implantable device heart failure diagnostics, which was a new arena Medtronic was working in.

I encouraged the integration of device diagnostics into the heart failure clinic workflow, so it could be used in the management of heart failure patients and setting up those workflows, customized different clinics.

Some of the items we've talked about already are Lean Sigma type events, creating worksheets.

Q. Yes, we don't -- other than -- right now, just to clarify with my question, I'm interested only in what we haven't already covered today.

A. Okay.

Q. And your counsel has encouraged me to end the deposition efficiently.

So I think you've identified a number of additional items -- Sue Heilman talking about reimbursement strategies; the truck that offered virtual implants; that a

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clinicians and physicians to attend. They partnered to provide referral dinners to help increase the business.

We also provided education on a local level, courses for clinical staffs to increase their comfort level with managing patients with devices -- and those were numerous -- to advance their knowledge, skills and abilities.

We did whatever it took to be the leader in education and service, to be the best at all that we did.

Q. Is there anything else?

MS. BURKE: Object to form.

THE WITNESS: Not in the moment.

BY MS. MAYER:

Q. And other than the staffing support that we've already discussed today, is there any other type of staffing support that you maintain is a kickback in this case? Or have we covered it today?

MS. BURKE: Object to form.

THE WITNESS: If we were called, we went, supporting ICD support groups,

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supporting physicians during recalls, navigating through Paceart to find the patients with that model number to assist the physician in understanding the significance of a recall on his clinic, facilitating a scientist conversation with a physician around a potential research question.

BY MS. MAYER:

Q. About a Medtronic product; right?

A. It could entail a Medtronic product. The research question could be general across the board.

Q. Not device-specific?

A. Yeah.

But we had education grants that potential investigators could apply for for research.

Q. Sorry. The educational grants are a staffing kickback? How is that a staffing kickback?

A. That's a service, a consulting service that we supplied if an implicit need came or rose up.

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Q. But we've covered any staffing --

MS. BURKE: Object to --

BY MS. MAYER:

Q. -- that you believe -- today already that you believe was a kickback; correct?

MS. BURKE: Object to form.

THE WITNESS: Yes, I believe we've covered the main ones.

BY MS. MAYER:

Q. Well, we've covered any of the ones that you're asserting is a part this case; right?

A. To the best of my knowledge, yes.

Q. Could you turn to page 19 of Exhibit 7.

Do you see -- it's a chart that's part of paragraph 49 to the Second Amended Complaint that there is a chart here on page 19. Do you see that?

A. Yes.

Q. Where did you -- I'm sorry. Scratch that.

What is your basis for alleging that, on November 9th, 2011, Dr. Gulotta was

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involved in a single ICD check with patient AJ?

A. I took these off of our Google Calendar.

Q. So were you involved in any of these events that are listed here, yourself personally?

A. No, because I was gone from Medtronic.

Q. Do you know -- sorry, strike that.

Right above the chart it says, "Each of these health care providers participates in Medicare."

Do you see that?

A. Uh-huh.

Q. What's your basis for saying that each of these providers participates in Medicare?

A. Because they get paid for the work that they do.

Q. But do you know that Dr. Gulotta participates in Medicare, or are you just assuming he participates in Medicare?

A. If you're involved in running a clinic or if you're a cardiologist that runs a

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clinic, you participate in Medicare.

Q. But whether that's a reasonable inference or not, I'm asking, you know, have you had a conversation with Dr. Gulotta where you talked about his Medicare participation?

A. No.

Q. And would St. Luke's Allentown be the biller for patient EH on November 16th, 2011?

MS. BURKE: Object to form.

BY MS. MAYER:

Q. Or would somebody else bill for that, a doctor?

A. The office typically conducted the billing.

Q. Who would be the -- the billing would be on behalf of the doctor or on behalf of a hospital or on behalf of something else?

MS. BURKE: Object to form.

BY MS. MAYER:

Q. Do you know?

A. St. Luke's Allentown could have been at a hospital or a clinic, so where the device interrogation occurred.

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Q. And you don't know where it occurred because this is all the information you have; right?

A. At this one, yes.

Q. Okay. What about the Lehigh Valley Cardiology Associates?

A. That's an office.

Q. So would the Pacer check for patient RF on December 13t, 2011 -- do you know whether it would have been billed by Lehigh Valley Cardiology Associates or by a doctor who was a part of the practice?

A. It would have been billed on behalf of the doctor that performed the professional component.

Q. And we don't know what doctor performed the professional component; right?

A. I don't personally, no.

Q. Okay. And it says that -- and so -- well --

MS. BURKE: Are you done with Exhibit 7?

MS. MAYER: No. Mark this as Exhibit 8.

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(Forney Exhibit 8, Pictures of Patient Information Posted to Lehigh Valley Gmail Account Associated with Google Voice, Bates Rel-1418 to 1458, was marked for identification.)

BY MS. MAYER:

Q. I'm showing you what's been marked as Exhibit 8, Ms. Forney.

Do you recognize this?

A. Yes.

Q. What is this?

A. These are pictures that I took from Gmail associated with a Google Calendaring system for Eastern Pennsylvania.

Q. And did you provide this to the United States and the states?

A. Yes.

Q. Can you turn to the Bates number -- it's about -- it's two pieces of paper in, about three pages in, REL-01421. Do you see that page?

A. 421, yeah.

Q. Okay. So this looks like a snapshot of what -- what is this? An email?

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A. Yes.

Q. It says, "Kay Brotzman, to me." Does the "me" refer to you?

A. I was no longer with Medtronic at the time this was taken.

Q. But you still had access to the Google Calendar?

A. Yes.

Q. So do you know who the "me" refers to?

A. Which are you looking at, this one here, Kay Brotzman?

Q. Yep, the one that's blown up on the screen.

A. Where is -- oh, Kay Brotzman. It looks like it's directed to Chuck Seighman.

Q. I'm sorry. What was the last name?

A. Or not Chuck Seighman. Chuck Mertz.

Q. Okay.

A. Yeah. Chuck set up the Google Calendaring system and the Google portal for customers. So probably, since this is directed at Chuck, because he created it, is -- that's probably who "me" refers to.

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Q. You think it's Chuck.

A. Yeah.

Q. Okay. So it's -- Kay Brotzman says, "Good morning, Chuck. We have a pacer check in the office on November 22 on Delores Neifert, who is having a general change done. Can you please make sure someone can be here to help us out?"

Right? Do you see that?

A. Yeah.

Q. So is this the source of the information in the chart that says patient -- in Exhibit 7 on page 19, that says, "Patient DN, Lehigh Valley Cardiology Associates, Pacer check, November 22, 2011"?

A. Say that again.

Q. Sure. Does -- is the Kay Brotzman to Chuck Mertz email that is screenshotted in Exhibit 88, page 01421 the source for your allegation on page 19 of the Second Amended Complaint, Exhibit 7, that patient DN at Lehigh Valley Cardiology Associates had a Pacer check on November 22, 2011?

A. No, these are two different items.

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Q. Okay. So what -- you said the source for the --

A. So --

Q. -- information in this chart is not --

A. -- this is the Pacer chart. This would have come off the Google Calendaring system, where this is the email.

Q. Okay.

A. So this individual -- oh, wait, maybe it is. Hold on. She had a gen change. So maybe in this case, it initiated with an email, and then it got put on the calendar -- calendaring system, and this here looks like it's more off the calendaring system. But this would have been the request.

Q. Do you remember --

MS. BURKE: And let the record reflect that "this here" the witness is referring to Exhibit 7, page 19.

BY MS. MAYER:

Q. Okay. So turn to page 01422 of Exhibit 8.

A. Wait, which is Exhibit 8?

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Q. The --

A. Email?

Q. -- Gmail account document.

A. 01428?

Q. 01422. It's the next page.

A. Oh, the next page, okay.

Q. This -- and the screenshot, the top screenshot email, is an email from Cathy Jo Leiby to me. Do you see that?

A. Yeah.

Q. And it says in the body of the email, "I know Dave spoke to you regarding Elsie Hilbert; they've decided they would like her device interrogated sometime today. She is in room 450 at St. Luke's Allentown."

A. Uh-huh.

Q. And the date of this email is a little hard to see, but it looks like it's 11/16.

A. Yes.

Q. And if you look on Exhibit 7, the Second Amended Complaint, right below the line about patient DN is a line about patient EH, St. Luke's Allentown, interrogation of device,

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November 16h, 2011.

A. Uh-huh.

Q. But this email wasn't the source of your information on this?

A. This email could be the source. And like I shared, then it would be put on the calendar. So there's two places you can pull a source from.

Q. And do you remember which you pulled this from or --

A. I don't recall exactly which one.

Q. Okay. Okay.

A. But it's double-sourced.

Q. Okay. Do you know for sure it's in both, or you just recall that?

A. We can look at some of the other documents or pictures of the calendars, and that would confirm.

Q. Okay. If you turn to the next page in Exhibit 8 which is REL-01423, do you see that?

A. Yep.

Q. It's a "Google Voice, to me." And it's a voicemail that makes reference to Lehigh

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Valley Heart Specialists and a patient called Michael Boyle?

A. Correct.

Q. And then you see the line below, patient EH on page 19 of Exhibit 7 refers to a patient MB and Lehigh Valley Cardiology Associates.

Is this voicemail the source of that allegation in the complaint?

A. Per my prior response, it could be this email. Also it could be confirmed on a calendar.

MS. MAYER: Okay. Can we mark another exhibit? This is Exhibit 9.

(Forney Exhibit 9, Pictures of Patient Information Posted to Google Calendaring 11.11.11, Bates REL-1666 TO 1772, was marked for identification.)

BY MS. MAYER:

Q. I'm showing you what has been marked as Exhibit 9. Do you recognize this?

A. Yes.

Q. What is it?

A. These are pictures from Google



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Calendar system.

Q. And did you produce this to the government?

A. Yes.

Q. Do you -- how would I look through this printout to try to find reference to the events that you listed on page 19 of the second amended complaint, Exhibit 7?

A. I'm not sure if --

Q. I will tell you, I haven't been able to find them.

A. -- they all got copied.

But I would say a sample could be here where I would open up an event and then the details would populate. So you may not be able to see it from this higher level, but if there's a picture of an event that's open, that's how you could read the details.

Q. So if I wanted to try to find "Patient DN, Pacer check with Lehigh Valley Cardiology Associates on November 22, 2011," should I be looking for these opened windows like we see on REL-01667 of Exhibit 9 that has notes about an ICD reprogramming for a

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G. Witmer? I should be looking for something like that for a patient DN?

A. Yeah, it's hard to read the details.

My intent was to open each one of these to provide the details from the calendar view, and it may not all have copied.

Q. When you prepared this information for your complaint in this case, did you still have electronic -- when you were drafting that original complaint to the case, did you still have access to the electronic Google Calendar records that -- some of which you printed off here?

A. My access to the Google Calendar ended in February of 2012, I believe.

Q. Okay. So did you prepare for the Complaint the list of patient and device check events that we see in the complaint after February 2012?

A. Yes.

Q. So you relied on something other than the electronic Google Calendar in order to make the chart that we see on page 19 of Exhibit 7; right?

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A. I relied on the pictures I took.

Q. Okay. Which are in Exhibit 9?

A. These are samples of them, yes.

Q. Are there more of these that you have that are not included in Exhibit 9?

A. I don't know.

MS. MAYER: Susan, do you know whether you produced all of the Google Calendars that Ms. Forney collected?

MS. BURKE: I believe we did, both in hard copy and electronic, but I can double-check.

THE WITNESS: Yeah.

MS. MAYER: By "electronic," you mean, like, a .pdf of this paper printout; right?

MS. BURKE: I need to -- I cannot -- I cannot, as I sit here today, recall what the format --

BY MS. MAYER:

Q. Okay. And so the -- so, Ms. Forney, the information that we see in the chart on page 19 in Exhibit 7 either came from the email printouts that we discussed from Exhibit 8 or

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from your printouts from the Google Calendar that are in Exhibit 9 --

A. Correct.

Q. -- and that may be the end of it, and I can follow up with Ms. Burke separately to see whether there are any additional Google Calendars that were printed out that could be a source of this information.

A. Yeah.

Q. But there wouldn't be any other potential source of that information; correct?

A. My recollection was I printed out more samples like this, so the details could be seen.

Q. Okay. And in the Second Amended Complaint right above the chart on page 19, it says that each of the providers listed in the chart submitted claims for the patients listed in the chart to the Medicare program.

Is that pleading also based on the information in Exhibit 8 and information from the Google Calendars in Exhibit 9?

A. Each healthcare provider that performs ICD or Pacer or CRT checks has

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mechanisms in place to bill for the work that's performed.

Q. And so other than what you've just said, which is your general understanding, that any -- each -- that each healthcare provider that performs ICD or Pacer or CRT checks has mechanisms in place to bill for work that's performed, do you have any other -- are you relying on any other information in support of your allegation that each of these providers submitted claims for each of these patients to Medicare?

MS. BURKE: Object to the characterization of the testimony.

BY MS. MAYER:

Q. Did I misrepresent your testimony, Ms. Forney?

A. In addition, when we performed follow-ups, we completed worksheets and submitted them to the clinic.

Q. Did you -- so do you have worksheets -- well, strike that.

Do the worksheets show that a claim for a patient was submitted to a particular

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insurer?

A. No.

Q. So have we now covered all of the information you have about -- in support of your allegation that these providers in the chart on page 19 of Exhibit 7 submitted claims for the patients listed there to the Medicare program?

MS. BURKE: Object to form.

THE WITNESS: Yes.

BY MS. MAYER:

Q. And so you don't -- you don't actually know that patient AJ was a Medicare beneficiary; right? AJ could have been a private health insurance beneficiary; right?

MS. BURKE: Object to form.

THE WITNESS: The majority of patients with pacemakers and medical devices, high, high probability it's Medicare, just due to the age of the population that's implanted.

BY MS. MAYER:

Q. Right.

A. I can't say specifically if that

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patient was 50 years old and private insurance or Medicaid or Medicare.

Q. Right. And the same is true for all the patients listed on page 19 in that chart; right?

A. Correct.

Q. Okay. Turning to paragraph 50 of the Second Amended Complaint, Exhibit 7, on page 20, is the source of the information that we see about Palmerton and Quakertown and Wind Gap, also the snapshotted emails and records that we see in Exhibit 8 that we've already discussed? And I can direct your attention, for example, to page 01448 of Exhibit 8.

A. Yes.

Q. So these -- do you have any information about who these patients were or what was done in Palmerton or Quakertown or Wind Gap on these dates other than what appears in Exhibit 8 on page 01448? Or elsewhere in Exhibit 8?

A. So the device clinic at Palmerton on 11/30, a Medtronic individual would show up and

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do six device checks.

Q. Right. But other than what you see here, you weren't at that clinic; right?

A. Correct.

Q. And you haven't talked to anybody about what did or didn't happen at that clinic; right?

A. On this date, no.

Q. Right. And so, hypothetically, all six device checks could have canceled that day; right?

A. Correct.

Q. And there's no information here about insurance; correct? So, hypothetically, all of these patients could have been self-pay; correct?

A. Correct.

Q. I'd like to turn your attention to paragraph 52 on page -- starts on page 21 of the Second Amended Complaint. It's Exhibit 7.

Paragraph 52 on page 21 starts listing names and addresses. Do you see that, where the first one says, "California," there's a colon, "James T. Heywood"? Do you see that?

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1 It's Exhibit 7, page 21, paragraph 52.

2 A. Page 21?

3 Q. Yeah, sorry. I do that myself.

4 A. Oh, I'm on page 52.

5 Q. Yeah. So page 21, paragraph 52. Do  
6 you see how it starts with "California: James  
7 T. Heywood"?

8 A. Uh-huh.

9 Q. And then after that, the paragraph  
10 52 lists names continuing on until page 27,  
11 correct, of Exhibit 7?

12 Did you supply these names for the  
13 Complaint?

14 A. I don't recall.

15 Q. Do you have any information --  
16 sorry. Strike that.

17 Sitting here today, do you know a  
18 James T. Heywood in La Jolla, California?

19 A. I know of him.

20 Q. How do you know of him?

21 A. He's well-known.

22 Q. For what?

23 A. As an electrophysiologist.

24 Q. Okay. Do you know whether Medtronic  
25

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1 provided free device checks to him in the time  
2 period relevant to this case? Or is that  
3 outside your personal knowledge?

4 A. That's outside my personal  
5 knowledge.

6 Q. Do you know who Gregory Engel is?

7 A. No.

8 Q. And so you don't know, obviously,  
9 whether Medtronic provided any free services to  
10 Gregory Engel; right? It's outside your  
11 personal knowledge?

12 A. It's outside my personal knowledge.

13 Q. Do you -- what about any of the --  
14 take a moment -- any of the other names that  
15 appear in paragraph 52? Do you have personal  
16 knowledge of any services that Medtronic  
17 provided to any of these people?

18 MS. BURKE: Object to form.

19 THE WITNESS: I don't recall if I  
20 ran a report out of Salesforce and got  
21 these names. I just don't recall back  
22 that far.

23 BY MS. MAYER:

24 Q. When was your access to Salesforce  
25

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1 cut off?

2 A. The day I left Medtronic.

3 Q. Did you print out a report of -- off  
4 of Salesforce that would contain these names?

5 A. I don't recall.

6 Q. You don't recall running any such  
7 report; right?

8 A. I don't recall in this moment if I  
9 ran a report of physician names and addresses  
10 in Salesforce.

11 Q. Well, why would you have run a  
12 report of physician names and addresses in  
13 Salesforce before you left the company?

14 A. I could document who was being  
15 utilized within Salesforce. It wasn't rolled  
16 out to the entire field yet, but it was  
17 partially rolled out.

18 There was many districts that were  
19 left without a calendaring system during this  
20 time by Medtronic.

21 Q. And do you recall -- and since you  
22 don't recall even running such a report, you  
23 don't recall taking a copy of such a report  
24 with you when you left Medtronic; right?  
25

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1 MS. BURKE: Object to form.

2 THE WITNESS: I don't recall.

3 BY MS. MAYER:

4 Q. Did you take a -- you don't recall.

5 You don't recall taking a copy of a  
6 Salesforce report listing doctor names with you  
7 when you left Medtronic; right?

8 A. I don't recall.

9 Q. And so you don't have any basis for  
10 believing that Ghassan Adnan Mohsen from  
11 Ridgecrest, California, received kickbacks from  
12 Medtronic and billed Medicare; right?

13 A. If their name was in Salesforce,  
14 they received services from Medtronic.

15 Q. But you don't know whether Ghassan  
16 Adnan Mohsen is in Salesforce; right?

17 A. I don't recall.

18 Q. Well, you don't know.

19 MS. BURKE: Object to form. Can you  
20 read the question back?

21 (Record read.)

22 THE WITNESS: I don't recall.

23 BY MS. MAYER:

24 Q. Did you once know whether Ghassan  
25

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Adnan Mohsen was in Salesforce? Was that knowledge that you had?

A. I don't recall.

Q. Paragraph 53 of the Exhibit 7, Second Amended Complaint, the second sentence says, "The physicians and hospitals being paid kickbacks by Medtronic, including those specific physicians named above, and in the examples given in the Eastern District of Pennsylvania region, submitted claims for reimbursement to Medicare without revealing they had received kickbacks from Medtronic."

Do you see that?

A. Yes.

Do you have any information about what claims any of the physicians in paragraph 52 did or did not bill to Medicare?

MS. BURKE: Object to form.

THE WITNESS: I don't recall.

BY MS. MAYER:

Q. Did you ever have that information in your knowledge?

A. I don't recall.

Q. These doctor names were put in the

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Second Amended Complaint sometime this -- this year. I just want to make sure you have no recollection of identifying these doctors for adding to the Second Amended Complaint.

Is it correct that you have no recollection of, this year, identifying these doctors to add to the Second Amended Complaint?

A. I don't recall.

Q. Did you take a summer vacation this year, Ms. Forney?

A. A short one.

Q. Where did you go?

A. I went to the beach.

Q. When did you go to the beach?

A. In July.

Q. What did you do at the beach in July? Swim?

A. I spent time with family.

Q. And you remember your vacation at the beach; right? In July?

A. I do.

Q. But you don't remember whether you added these names to the Complaint --

MS. BURKE: Objection; asked --

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BY MS. MAYER:

Q. -- this year?

MS. BURKE: Objection; asked and answered.

THE WITNESS: Correct.

MS. BURKE: Can we take a brief break?

MS. MAYER: Sure.

THE VIDEOGRAPHER: We are going off the record at 6:29.

(Recess taken from 6:29 p.m. to 6:38 p.m.)

THE VIDEOGRAPHER: We are back on record at 6:38.

BY MS. MAYER:

Q. Ms. Forney, turning again to Exhibit 7, the Second Amended Complaint, if you wouldn't mind turning to paragraph 24 of the Complaint -- paragraph 24 -- I'd like to direct your attention to the fourth line up from the bottom.

The line begins with "device implantation" then says, "The FY 2010." Do you see that?

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A. Uh-huh.

Q. What --

MS. BURKE: Can you read the answer back, please.

(Record read.)

THE WITNESS: Yes.

BY MS. MAYER:

Q. What document are you referring to when you say, "The FY 2010 shows the New York district with an average number of calls by clinical specialists and sales representatives at 3,048 calls per device"?

A. This was a document that a district service manager in that district provided for me.

Q. Did you provide a copy of that to your counsel in this case?

A. Yes.

MS. MAYER: Susan, I'll represent to you, we haven't been able to find that document in the production, so I don't know if it was inadvertently left out.

MS. BURKE: I'm fairly confident we did produce it, but I'll run the Bates

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1 CATHLEEN FORNEY  
2 number down for you.  
3 MS. MAYER: Okay, great.  
4 BY MS. MAYER:  
5 Q. Can you turn to paragraph 36,  
6 please.  
7 Do you see reference in this  
8 paragraph to advertisements for full-time  
9 device clinic technicians by the Heart Center  
10 of North Texas and the Okaloosa Heart &  
11 Vascular Center in Crestview, Florida?  
12 A. Uh-huh.  
13 Q. Do you have those -- the documents  
14 that reflect those ads, those advertisements?  
15 A. I believe so.  
16 Q. Did you provide them to Ms. Burke?  
17 A. I believe so.  
18 MS. MAYER: We don't have those  
19 either.  
20 MS. BURKE: And we'll again  
21 represent that we produced them. I'll  
22 track down a Bates number for you.  
23 MS. MAYER: Okay.  
24 BY MS. MAYER:  
25 Q. Could you turn to paragraph 39,

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1 CATHLEEN FORNEY  
2 please. In the middle of this paragraph,  
3 there's reference to "this particular  
4 November 2008 briefing by Medtronic CRDM  
5 healthcare economics division."  
6 Do you see that?  
7 A. Yes.  
8 Q. Is that a document that you're  
9 referring to there?  
10 A. I believe so.  
11 Q. Is that a document that you provided  
12 to counsel?  
13 A. I believe so.  
14 MS. MAYER: And we haven't been able  
15 to find that one either, Susan.  
16 MS. BURKE: Again, we'll represent  
17 that we produced that, and I will track  
18 down a Bates number for you.  
19 BY MS. MAYER:  
20 Q. Great. There are lots of other  
21 documents referenced in the Second Amended  
22 Complaint. Have you provided to the government  
23 all of the documents that you refer to in  
24 either the original Complaint, the First  
25 Amended Complaint or the Second Amended

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1 CATHLEEN FORNEY  
2 Complaint in this case?  
3 A. Yes.  
4 Q. Have you provided any documents to  
5 the government in addition to the documents  
6 referenced in either the original Complaint,  
7 the First Amended Complaint or the Second  
8 Amended Complaint?  
9 A. Not to my knowledge.  
10 MS. MAYER: I'd like to mark this as  
11 Exhibit -- what are we up to now, 10?  
12 (Forney Exhibit 10, Email  
13 communication, 5-4-10, with attachment,  
14 Bates MDTEPA-92769 to 778, was marked for  
15 identification.)  
16 BY MS. MAYER:  
17 Q. Ms. Forney, I'm showing you what's  
18 been marked as Exhibit 10. It's a document  
19 that begins with Bates number MDTEDPA00092769.  
20 Do you see this?  
21 A. Uh-huh.  
22 Q. It's an email from Brian Dye to  
23 Patricia Meyer, copying you. Do you see that?  
24 A. Yes.  
25 Q. And the subject is -- and it's

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1 CATHLEEN FORNEY  
2 May 4th, 2010; and the subject is the Dan  
3 DeBlass file?  
4 A. Yes.  
5 Q. If you look at the first paragraph  
6 of this email -- well, first of all, who is  
7 Patricia Meyer?  
8 A. I'm assuming she's HR.  
9 Q. Do you know who Patricia Meyer is?  
10 A. I don't recall.  
11 Q. It says, "Attached are three  
12 documents that have detailed documentation on  
13 Dan's performance." This is an email from  
14 Brian. It says, "Chuck Mertz, Cath Forney and  
15 myself have also had many face-to-face meetings  
16 with Dan to discuss his poor performance."  
17 Do you see that?  
18 A. Yes.  
19 Q. Do you recall your many face-to-face  
20 meetings with Dan to discuss his poor  
21 performance?  
22 A. I did not have these conversations.  
23 Q. If you turn to the second attachment  
24 at MDTEDPA00092776.  
25 Do you see that? It's an



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interoffice memo to Dan DeBlass from Chuck Mertz copying Lily Chang and Patricia Meyer.

A. Uh-huh.

Q. Who's Lily Chang?

A. This was dated before I was in the district.

Q. Do you see, as you move down, May 29th, 2008, there's an entry, and it says -- this is a memo to Dan DeBlass -- "You were asked not to return to the hospital to work with Dr. Tejada after a near physical altercation during a case."

Do you see that?

A. Uh-huh.

MS. BURKE: Can you read that answer back, please.

THE WITNESS: Yes.

BY MS. MAYER:

Q. Were you aware that Dan DeBlass had gotten into a near physical altercation during a case with Dr. Tejada?

A. I was not.

Q. At least until you received the email on May 4th, 2010; right?

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A. I don't recall the details of this document.

Q. Can you turn to the last piece of paper in this exhibit, it's MDTEDPA00092774.

Direct your attention to the bolded January 14th, 2010. Do you see that?

A. Uh-huh.

Q. It says, "Email sent from Dan to Chuck, Robert and Cath."

And Cath is you; right?

A. Yes.

Q. "Dan sent this email as a result of Cath" -- that's you -- "giving him guidance on how he might elevate his performance. Cath" -- you -- "met with him to discuss his poor performance in early January."

So do you remember meeting with him to discuss his poor performance in early January?

A. I do not.

Q. And then on January 26th, 2010, on this document, it says there's an email from Cath Forney to Brian Dye documenting Dan's performance in the field.

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And you were highlighting problems with Dan's performance, it looks like; correct?

A. Are you on 92775?

Q. 92774 right now. It goes over to 92775.

A. Yeah.

Q. I want to draw your attention to the third bullet of your email of January 26th, 2010. It says, "The LVH RNs overheard Levin ranting about Dan. On a recent post-implant check where IPG R wave diminished to 2mV he switched from bipolar to unipolar but didn't call Levin to advise him of the diminished R-wave."

What was wrong with what he did there?

A. He didn't communicate.

Q. Why was it important that he communicate that he had switched from bipolar to unipolar to Levin?

A. It's a clinical change on a lead, and typically we would advise and we filled out a worksheet. We would have -- have that documented. And it occurs that Dan did not do

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that.

MS. MAYER: I have nothing further.

MS. BURKE: We have no questions.

THE VIDEOGRAPHER: We are going off the record at 6:49.

(Time noted: 6:49 p.m.)

\_\_\_\_\_  
CATHLEEN FORNEY

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

## CERTIFICATE OF SHORTHAND REPORTER

I, Gail Inghram Verbano, Registered Diplomat Reporter, Certified Realtime Reporter, Certified Shorthand Reporter (CA), and Notary Public In and for STATE OF PENNSYLVANIA, the officer before whom the foregoing proceedings were taken, do hereby certify:

That CATHLEEN FORNEY, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of November, 2017.

Gail Inghram Verbano, RDR, CRR, CLR  
CA-CSR No. 8635

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CATHLEEN FORNEY

By Ms. Mayer 5

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## ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

Pg. No. Now Reads Should Read Reason

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7	---	---	---	---
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20	---	---	---	---

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.

(Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

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